

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

<b>RHYTHMS LINKS, INC.</b>	)	
	)	
<b>Proposed Implementation of High</b>	)	<b>Docket No. 00-0393</b>
<b>Frequency Portion of Loop</b>	)	
<b>(HFPL)/Line Sharing Service.</b>	)	

**DRAFT ORDER**  
**OF RHYTHMS LINKS, INC.**

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## TABLE OF CONTENTS

PROCEDURAL BACKGROUND .....	1
LEGAL AND REGULATORY BACKGROUND OF THE PROCEEDING .....	2
I. SCOPE OF COMMISSION AUTHORITY.....	3
A. Rate and Tariff Issues.....	3
1. Relevant State Law .....	3
2. Burden Of Proof.....	5
B. Identification Of New Unbundled Network Elements.....	7
1. Federal Law.....	7
2. State Law.....	9
C. Enforcement of Existing UNEs.....	9
D. Relevant Federal Communications Commission Orders .....	10
1. FCC Line Sharing Order.....	10
2. UNE Remand Order .....	14
3. SBC/Ameritech Merger Conditions.....	15
II. LINE SHARING OVER PROJECT PRONTO LOOPS.....	15
A. Unbundled Access to Project Pronto Architecture for Line Sharing .....	15
1. Rhythms' Position.....	15
2. Ameritech-IL's Position.....	23
3. Staff's Position.....	29
4. Commission Analysis and Conclusion.....	31
B. Collocation of CLEC Line Cards in Project Pronto Architecture.....	37
1. Rhythms' Position.....	37
2. Ameritech-IL's Position.....	39
3. Staff's Position.....	41
4. Commission Analysis and Conclusion.....	42
III. LINE SPLITTING OVER UNE-P LOOPS .....	44
IV. OSS ACCESS.....	44
A. Rhythms' Position.....	44
1. Ameritech-IL's Legal Requirements To Support Line Sharing.....	44
2. Ameritech-IL Must Give CLECs Direct and Gateway Access to All OSS Data and Functionality in its Back End Systems and Databases .....	46
3. Ameritech-IL's position .....	52
4. Staff's Position.....	54
5. Commission Analysis and Conclusion.....	54
V. PROVISIONING SPLITTERS ON A SHELF-AT-A-TIME BASIS VS. LINE-AT-A-TIME BASIS.....	60

A.	Rhythms' Position .....	60
1.	Discrimination and Cost Issues. ....	60
B.	Ameritech-IL's Position .....	61
C.	Staff's Position .....	61
D.	Commission Analysis and Conclusion .....	61
VI.	AMERITECH-IL'S SPLITTER OFFERINGS.....	62
A.	Location of the Splitter .....	62
1.	Rhythms' Position.....	62
2.	Ameritech-IL's Position.....	65
3.	Staff's Position.....	66
4.	Commission Analysis and Conclusion.....	66
B.	Required Splitter Configurations.....	67
1.	Rhythms' Position.....	67
2.	Ameritech-IL's Position.....	68
3.	Staff's Position.....	69
4.	Commission Analysis and Conclusions .....	69
VII.	LINE SHARING PROVISIONING INTERVALS.....	70
1.	Rhythms' Position.....	70
2.	Ameritech-IL's Position.....	72
3.	Staff's Position.....	72
4.	Commission Analysis and Discussion .....	73
VIII.	DIRECT ACCESS FOR TESTING AT ANY TECHNICALLY FEASIBLE POINT .....	73
1.	Rhythms' Position.....	73
2.	Ameritech-IL's Position.....	74
3.	Staff's Position.....	74
4.	Commission Analysis and Conclusion.....	75
IX.	OTHER NON-RATE ISSUES.....	75
A.	Augment Intervals For Line Sharing.....	75
1.	Rhythms' Position.....	75
2.	Ameritech-IL's Position.....	76
3.	Staff's Position.....	77
4.	Commission Analysis and Discussion .....	77
B.	Acceptance Testing For Line Sharing.....	77
1.	Rhythms' Position.....	77
2.	Ameritech-IL's Position.....	79
3.	Staff Position .....	81
4.	Commission Analysis and Conclusion.....	81
C.	Maintenance And Repair Intervals For Line Sharing .....	81
1.	Rhythms' Position.....	81
2.	Ameritech-IL's Position.....	82
3.	Staff's Position.....	83
4.	Commission Analysis and Conclusion.....	83

D.	Liability Provisions .....	83
1.	Rhythms' Position.....	83
2.	Ameritech-IL's Position.....	84
3.	Staff's Position.....	85
4.	Commission Analysis and Conclusion.....	85
X.	LOOP CONDITIONING AND QUALIFICATION.....	85
A.	Conditioning Charges .....	85
1.	Rhythms' Position.....	85
2.	Ameritech-IL's Position.....	87
3.	Staff's Position.....	91
4.	Commission Analysis and Conclusion.....	91
B.	Manual Loop Qualification Charge.....	92
1.	Rhythms' Position.....	92
2.	Ameritech-IL's Position.....	93
3.	Staff's Position.....	94
4.	Commission Analysis and Conclusion.....	94
XI.	LINE SHARING RATES .....	94
A.	High Frequency Portion of the Loop Charge.....	94
1.	Rhythms' Position.....	94
2.	Ameritech-IL's Position.....	96
3.	Staff's Position.....	98
4.	Commission Analysis and Conclusion.....	99
B.	OSS Modification Charge .....	99
1.	Rhythms' Position.....	99
2.	Ameritech-IL's Position.....	101
3.	Staff's Position.....	101
4.	Commission Analysis and Conclusion.....	102
C.	Cross Connect Configuration Charges .....	102
1.	Rhythms' Position.....	102
2.	Ameritech-IL's Position.....	104
3.	Staff's Position.....	104
4.	Commission Analysis and Conclusion.....	105
D.	Line-at-a-Time Company-Owned Splitter Charge.....	106
1.	Rhythms' Position.....	106
2.	Ameritech-IL's Position.....	107
3.	Staff's Position.....	107
4.	Commission Analysis and Conclusion.....	107
E.	Service Ordering Charges .....	108
1.	Rhythms' Position.....	108
a.	Service Ordering Charge.....	108
b.	Line Connection and Service Coordination Charges.....	108
2.	Ameritech-IL's Position.....	108
3.	Staff's Position.....	109
4.	Commission Analysis and Conclusion.....	109



## **PROCEDURAL BACKGROUND**

On April 21, 2000, Illinois Bell Telephone Company, d/b/a Ameritech Illinois ("Ameritech-IL"), filed its Ill. C. C. No. 20, Part 19, Section 2, 4<sup>th</sup> Revised Sheet No. 1, 2<sup>nd</sup> Revised Sheet No. 2, 3<sup>rd</sup> Revised Sheet No. 3, 2<sup>nd</sup> Revised Sheet No. 4, 3<sup>rd</sup> Revised Sheet No. 5, 2<sup>nd</sup> Revised Sheet No. 6, 3<sup>rd</sup> Revised Sheet No. 7, 2<sup>nd</sup> Revised Sheet No. 8, 3<sup>rd</sup> Revised Sheet No. 9, 1<sup>st</sup> Revised Sheet Nos. 10-12, and Original Sheet Nos. 13-38, hereinafter referred to as "Filed Rate Schedule Sheets," in which it proposed the implementation of High Frequency Portion of Loop (HFPL)/Line Sharing Service, to be effective June 6, 2000. The Commission determined that the Filed Rate Schedule Sheets should be suspended and set for hearing. The Commission entered its suspension order on June 1, 2000, suspending the Filed Rate Schedule Sheets until September 18, 2000, directing that Illinois Bell Telephone Company be made a Respondent to the proceeding, and directing that notice to be given as provided by the Public Utilities Act. The Commission further suspended the Filed Rate Schedule Sheets until March 18, 2001, by its order issued on September 7, 2000.

The Commission conducted a status hearing on June 30, 2000, during which a procedural schedule was adopted. The hearing was continued to October 16, 2000, for the taking of evidence. The following Intervenor participants participated in this matter: AT&T Communications of Illinois, Inc. ("AT&T"), Sprint Communications Company, L.P. ("Sprint"), Rhythms Links, Inc. ("Rhythms"), Covad Communications Company ("Covad"), WorldCom, Inc. ("WorldCom"), CLEC Coalition, NEXTLINK Illinois, Inc. ("Nextlink"), New Edge Network, Inc. ("New Edge"), Focal Communications Corporation of Illinois ("Focal"), and Ameritech Advanced Data Services of Illinois, Inc. ("AADS").

Ameritech-IL submitted the direct testimony of Betty Schlackman, Robin Jacobson, J. Thomas O'Brien, John P. Lube, and Dr. Michael A. Carnall on August 21, 2000. On September 1, 2000, Rhythms submitted the direct testimony of Kelly Caldwell, Joseph P. Riolo, and Terry L. Murray; AT&T submitted the direct testimony of Steven E. Turner; Staff submitted the direct testimony of Torsten Clausen, Robert F. Koch, and Russell W. Murray; Sprint submitted the direct testimony of James D. Dunbar, Jr. and Michael D. West; and Covad submitted the direct testimony of Michael Zulevic and Melia Carter.

Ameritech-IL submitted the rebuttal testimony of Betty Schlackman, Robin Jacobson, Dr. Michael A. Carnall, James R. Smallwood, John P. Lube, J. Thomas O'Brien, and Carol Chapman on September 20, 2000.

Rhythms submitted the surrebuttal testimony of Joseph Ayala, Joseph P. Riolo, and Terry L. Murray on October 5, 2000.

The Commission conducted an evidentiary hearing beginning on October 16, 2000. The parties filed Initial briefs on November 20 and Reply briefs on December 18, 2000.

## **LEGAL AND REGULATORY BACKGROUND OF THE PROCEEDING**

The purpose of this proceeding is to conduct an inquiry into the propriety of the Filed Rate Schedule Sheets submitted by Ameritech-IL to implement its High Frequency Portion of Loop ("HFPL") Line Sharing Service. The Commission examined Ameritech-IL's tariff under the authority of Sections 9-101 and 9-102, Illinois Revised Statutes.

## **I. SCOPE OF COMMISSION AUTHORITY**

### **A. Rate and Tariff Issues**

#### **1. Relevant State Law**

The Illinois Public Utilities Act (“PUA”) mandates that “all rates or other charges made, demanded or received...for any service rendered or to be rendered shall be just and reasonable,” and that “all rules and regulations made by a public utility affecting or pertaining to its charges to the public shall be just and reasonable.”<sup>1</sup> The PUA empowers the Commission to determine whether tariff proposals, or existing utility tariffs, are just and reasonable. If the Commission determines that an existing or proposed tariff provision is *not* just and reasonable, the Commission has broad powers and discretion to order rates, terms and conditions that are just and reasonable.<sup>2</sup>

Specifically, Illinois law provides:

Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that the rates or other charges, or classifications, or any of them, demanded, observed, charged or collected by any public utility for any service or product or commodity, or in connection therewith, or that the rules, regulations, contracts, or practices or any of them, affecting such rates or other charges, or classifications, or any of them, are unjust, unreasonable, discriminatory or preferential, or in any way in violation of any provisions of law, or that such rates or other charges or classifications are insufficient, the Commission shall determine the just, reasonable, or sufficient rates or other charges, classifications, rules, regulations, contracts or practices to be thereafter observed and in force, and shall fix the same by order as hereinafter provided.<sup>3</sup>

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<sup>1</sup> 220 ILCS 5/9-101.

<sup>2</sup> 220 ILCS 5/9-201(c); 220 ILCS 5/9-250. Under §13-101 and §13-504 of the PUA, the foregoing provisions of Article IX of the PUA are fully and equally applicable to the rates, charges, tariffs and classifications for the offer or provision of noncompetitive telecommunications services.

<sup>3</sup> 220 ILCS 5/9-250.



Moreover, §9-201(c) provides that “no rate or other charge, classification, contract, practice, rule or regulation shall be found just and reasonable unless it is consistent with Sections of this Article” (e.g., Article IX of the PUA).

The scope of the Commission’s authority to determine what constitutes a “just and reasonable” tariff provision is broad and flexible. It enables the Commission to determine what is just and reasonable depending upon the particular facts and circumstances of each case. As early as 1920, the Illinois Supreme Court established that a just and reasonable rate is “necessarily a question of sound business judgment rather than of legal formula” and “is a question of fact to be settled by the good sense of the tribunal.”<sup>4</sup> “The power to make rates, of necessity, requires the use of pragmatic adjustments which may be called for by the particular circumstances.”<sup>5</sup>

The broad scope of discretion given to the Commission to determine what constitutes a just and reasonable tariff provision stems from the Commission’s status as an expert tribunal established by the Legislature to consider the highly complex and technical subject matter involved in the regulation of utilities.<sup>6</sup> As the Illinois Supreme Court has noted:

It has long been established that in matters relating to services and rates of utilities technological data and expert opinion, as well as complex technological and scientific data, make it essential that the matter be considered by a tribunal that is itself capable of passing upon complex data.

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<sup>4</sup> *State Public Utilities Comm’n v. Springfield Gas & Elec. Co.*, 291 Ill. 209, 218 (1919). See also *Produce Terminal Corp. v. Commerce Commission*, 414 Ill. 582, 590 (1953); *Iowa-Illinois Gas & Elec. Co. v. Commerce Commission*, 19 Ill. 2d 436, 442 (1960).

<sup>5</sup> *Iowa-Illinois Gas & Elec. Co. v. Commerce Commission*, 19 Ill. 2d 436, 442 (1960).

<sup>6</sup> *Village of Apple River v. Commerce Commission*, 18 Ill. 2d 518, 523 (1960).

In determining whether a particular tariff provision is just and reasonable, the Commission may take into account many factors, depending on the circumstances before it. For example, the Commission may take into account the quality of the services provided,<sup>7</sup> the competitive conditions in the field,<sup>8</sup> the effect of proposed tariffs on different groups or classes of customers,<sup>9</sup> and the promotion of the objectives of adequate, reliable and efficient service.<sup>10</sup> An overriding principle in the Commission's determination of whether a tariff is just and reasonable involves a balancing by the Commission of the interests of the utility's stockholders and customers.<sup>11</sup>

Further, the Commission's exercise of its broad authority requires it to take an *active role* in determining what constitutes the just and reasonable tariff provisions in each case. The Commission is not merely an arbitrator between the utility and the parties to a case opposing a tariff change. Rather, the Commission is an investigator and regulator of utilities responsible for the setting of just rates, terms and conditions for all affected by tariffs.<sup>12</sup>

## **2. Burden Of Proof**

Under the PUA, when a utility files a proposed new tariff or a proposed change to an existing tariff, the Commission may either (1) allow the proposed tariff to go into effect, without hearing, or (2) suspend the effectiveness of the proposed tariff, and

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<sup>7</sup> *Citizens Utilities Co. of Illinois v. O'Connor*, 121 Ill. App. 3d 533, 540-41 (2d Dist. 1984).

<sup>8</sup> *Produce Terminal Corp.*, *supra*, 414 Ill. 582, 594.

<sup>9</sup> *Citizens Utility Board v. Commerce Commission*, 276 Ill. App. 3d 730, 736-39 (2d Dist. 1995).

<sup>10</sup> *Abbott Laboratories, Inc. v. Commerce Commission*, 289 Ill. App. 3d 705, 712-13 (1st Dist. 1997).

<sup>11</sup> *Abbott Laboratories*, *supra*, 289 Ill. App. 3d 705, 716; *Citizens Utility Board*, *supra*, 276 Ill. App. 3d 730, 736-37.

<sup>12</sup> *People ex rel. Hartigan v. Commerce Commission*, 117 Ill. 2d 120, 135 (1987); *Citizens Utility Board v. Commerce Commission*, 276 Ill. App. 3d 730, 740 (1st Dist. 1995).

initiate a hearing into whether the proposed tariff is just and reasonable.<sup>13</sup> Section 9-201 is clear that should the Commission suspend the proposed tariff for investigation, the utility bears the burden of proof to establish that that tariff is just and reasonable.<sup>14</sup>

As the statutory language shows, this rule is applicable not only to the rates and charges in the utility's proposed tariff, but also to the utility's classifications, contracts, practices, rules or regulations embodied in its proposed tariff. Similarly, if the Commission on its own motion enters into a hearing on the justness and reasonableness of one or more of a utility's rates, charges, classifications, rules, regulations, contracts or practices, as empowered by Section 9-250 of the PUA,<sup>15</sup> the burden of proof is on the utility.

Illinois courts have consistently upheld the statutory provisions that unambiguously place the burden of proof on the utility to demonstrate that its tariff proposals are just and reasonable.<sup>16</sup> This burden goes to the *details* of the proposed tariff, and not just to whether it is just and reasonable in general. In reviewing a Commission order for a local exchange company rate-setting case, a state appeals

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<sup>13</sup> 220 ILCS 5/9-201(a)-(b); *City of Chicago v. Commerce Commission*, 13 Ill. 2d 607, 610-11, 616-17 (1958); *Antioch Milling Co. v. Public Service Co. of Northern Illinois*, 4 Ill. 2d 200, 204 (1955).

<sup>14</sup> 220 ILCS 5/9-201(c). Under Sections 13-101 and 13-504 of the PUA, the foregoing provisions of Article IX of the PUA are fully and equally applicable to the rates, charges, tariffs and classifications for the offer or provision of noncompetitive telecommunications services.

<sup>15</sup> 220 ILCS 5/9-250

<sup>16</sup> See, e.g., *City of Chicago v. Commerce Commission*, 13 Ill. 2d 607, 617 (1958) (in any investigation of the reasonableness of a utility's rates, charges, classifications, rules, regulations, contracts or practices, the burden of proof is on the utility); *Central Illinois Public Service Co. v. Commerce Commission*, 5 Ill. 2d 195, 211 (1955) (where Commission decides to suspend a rate and hold hearings on it, the burden of proof falls on the proponent of the rate, whether the proposal is for a change in an existing rate or for the establishment of a new rate); *Fleming v. Commerce Commission*, 388 Ill. 138, 160 (1944); *Citizens Utility Board v. Commerce Commission*, 276 Ill. App. 3d 730, 746 (1st Dist. 1995); *Citizens Utilities Co. of Illinois v. O'Connor*, 121 Ill. App. 3d 533, 541 (2d Dist. 1984)

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court recently confirmed that the utility must demonstrate the reasonableness of all rate components, including rate elements included in its costs, operating costs, the value of property used in providing service and the rate of return on capital.<sup>17</sup> The same court made clear that the utility has an affirmative burden of proof.

It is not enough for the utility to argue that opposing parties failed to show that the utility's tariff was unreasonable. The Court stated unequivocally that "requiring intervenors to establish unreasonableness is...no substitute for requiring proof of reasonableness."<sup>18</sup>

It is therefore, clear that Ameritech-IL has the burden of proof in this proceeding to demonstrate that its proposed tariff provisions are just and reasonable.

## **B. Identification Of New Unbundled Network Elements**

### **1. Federal Law**

From the earliest days of the competitive environment initiated by the Telecommunications Act of 1996, the FCC has acknowledged the role of state Commissions in implementing the Act. In its First Report and Order, issued in August 1996, the FCC pointed to the role of state commissions in arbitration and rate-setting, and specifically identified the state role in identifying UNEs:

State commissions may identify network elements to be unbundled, in addition to those elements identified by the Commission, and may identify additional points at which

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(utility has burden of showing that its proposed rates are reasonable, and must produce sufficient evidence to meet that burden).

<sup>17</sup> *Citizens Utility Board v. Commerce Commission*, 276 Ill. App. 3d 730, 746 (1<sup>st</sup> Dist. 1995) (Citations omitted.).

<sup>18</sup> *Id.* at 747, *quoting People ex rel. Hartigan v. Commerce Commission*, 117 Ill. 2d 120, 135-36 (1987).

incumbent LECs must provide interconnection, where technically feasible.<sup>19</sup>

The FCC reconfirmed states' authority to identify UNEs in addition to those included on the national list of UNEs in its UNE Remand Order.<sup>20</sup> The FCC specifically discussed modification of the national list by the states, stating that "section 251(d)(3) grants state commissions the authority to impose additional obligations upon incumbent LECs beyond those imposed by the national list, as long as they meet the requirements of section 251 and the national policy framework instituted in this Order."<sup>21</sup> Further, the Commission codified the standards state commissions must apply when adding elements to the minimum national list of UNEs. First, the state Commission must determine whether it is technically feasible for the incumbent LEC to provide access to a network element on an unbundled basis.<sup>22</sup>

Once the state commission determines it is technically feasible for the ILEC to provide the requested UNE, the Commission may only deny access to an unbundled element in two situations: first, where the element is shown to be proprietary and the CLEC could offer the same service by using other nonproprietary elements in the incumbent LEC's network; and second, where denial would not decrease the quality of the service the CLEC wishes to provide, and would not increase the financial or

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<sup>19</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order (Rel. Aug. 8, 1996) at 136.

<sup>20</sup> *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking (Rel. Nov. 5, 1999)("UNE Remand Order").

<sup>21</sup> *Id.*, at 154.

<sup>22</sup> 47 C.F.R. 51.317(a).

administrative cost of providing that service compared to the cost of providing it over other, already available, UNEs in the ILEC's network.<sup>23</sup>

## **2. State Law**

The Commission also has specific state authority to order the unbundling of additional network elements. The PUA explicitly authorizes the Commission to impose unbundling requirements that exceed those set by the FCC:

A telecommunications carrier that provides both noncompetitive and competitive telecommunications services shall provide all noncompetitive telecommunications services on an unbundled basis to the same extent the Federal Communications Commission requires that carrier to unbundle the same services provided under its jurisdiction. The Illinois Commerce Commission may require additional unbundling of noncompetitive telecommunications services over which it has jurisdiction based on a determination, after notice and hearing, that additional unbundling is in the public interest and is consistent with the policy goals and other provisions of this Act.<sup>24</sup>

Thus, the Commission has extensive authority to require the offering of additional UNEs.

## **C. Enforcement of Existing UNEs**

The FCC has designated access to OSS as a UNE in its minimum national list of UNEs, and has specifically reserved a role for state commissions in implementing OSS UNEs. The FCC stated in the UNE Remand order that "the states have primary authority under section 252 for setting schedules and resolving disputes concerning access to OSS functions as unbundled network elements."<sup>25</sup> Moreover, the FCC reconfirmed state authority over CLEC access to OSS UNEs in the Merger Conditions

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<sup>23</sup> 47 C.F.R. 51.317(b).

<sup>24</sup> 220 ILCS 5/13-505.6.

Order allowing the SBC/Ameritech merger.<sup>26</sup> The FCC included an express statement that the Conditions are not intended to “restrict, supersede, or otherwise alter state or local jurisdiction” or “to limit state authority to adopt rules, regulations, performance monitoring programs, or other policies that are not inconsistent with these Conditions.”<sup>27</sup> Thus, the Commission has authority to ensure that Ameritech-IL provides CLECs access to all OSS functionality and data necessary to support line sharing.

#### **D. Relevant Federal Communications Commission Orders**

##### **1. FCC Line Sharing Order**

The FCC's Line Sharing Order sets forth the obligations of ILECs, such as Ameritech-IL, to provide line sharing to competitive carriers. Under the Line Sharing Order, an ILEC must: (1) provide unbundled access to the high frequency portion of the loop so that carriers may use those frequencies to provide xDSL-based services,<sup>28</sup> and (2) provide access to OSS necessary to support non-discriminatory pre-ordering, ordering, provisioning, maintenance and testing, and billing for CLECs.<sup>29</sup>

The Line Sharing Order specifically discusses line sharing over the copper portion of the local loop, from the customer premises to the ILEC central office. The Order, however, does not preclude or restrict deployment of other technologically

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<sup>25</sup> UNE Remand Order at 437.

<sup>26</sup> In re Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules, CC Docket No. 98-141 (Rel. Oct. 8, 1999). Appendix C (Conditions) at fn. 2.

<sup>27</sup> SBC/Ameritech Merger Order, Conditions, at 1.

<sup>28</sup> Third Report And Order In CC Docket No. 19-147 Fourth Report And Order In CC Docket No. 96-98, rel. Dec. 9, 1999, ¶ 19 (“Line Sharing Order”). Incumbents are required to provide unbundled access to the high frequency portion of the loop to a carrier seeking to deploy any version of xDSL that is presumed acceptable for shared-line deployment in accordance with the FCC rules. *Id.* ¶ 70. A feature is presumed acceptable for shared-line deployment so long as it does not interfere with the voice transmissions on the loop. *Id.* See also 47 C.F.R. § 230.

feasible methods of line sharing, including line sharing over the fiber-fed DLC configurations being widely deployed by SBC, the parent of Ameritech-IL. Because line sharing over such fiber-fed systems was not technically possible at the time the Line Sharing Order was released,<sup>30</sup> it is not surprising that line sharing over fiber-fed DLC systems, such as those SBC is now deploying, are not *specifically* required by the Line Sharing Order. Indeed, SBC did not reveal its plans for Project Pronto to the FCC even though SBC's plans for Project Pronto predate the period during which the FCC was considering line sharing.<sup>31</sup> Therefore, the Line Sharing Order could not have taken account of SBC's planned Project Pronto architecture when determining all configurations over which SBC should support line sharing.

It is clear from the Line Sharing Order that the FCC intended for its rules to encourage competition, new technologies, and technological innovation to the fullest extent.<sup>32</sup> The FCC stated in the Line Sharing Order that its "fundamental goal is to promote innovation, investment and competition in the advanced services

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<sup>29</sup> Line Sharing Order, ¶ 93 n.213.

<sup>30</sup> Line Sharing Order, ¶ 17 n.27 (stating that at the time of the release of the Order, line sharing "is only possible on metallic loops").

<sup>31</sup> Hearing Tr. (Lube) 314. Second Memorandum Opinion and Order, FCC Docket No. 98-141, FCC 00-336, rel. September 8, 2000. In a dissenting opinion from the FCC's order regarding ownership of the line cards for SBC's NGDLC equipment, Commissioner Harold Furthgott-Roth stated, "at the time the Bureau was engaged with SBC in negotiating the merger conditions, SBC was in the process of planning its rollout of Project Pronto. Indeed, SBC announced the venture only days after the Commission released its order approving the merger." The Merger Conditions Order and the Line Sharing Order were released in October and November, 1999 respectively.

<sup>32</sup> See, Line Sharing Order, ¶ 1. *Id.* ¶ 4 (adopting measures designed to promote the availability of competitive broadband xDSL-based services, especially to residential and small business customers); *Id.* ¶ 14 (FCC's rules designed to encourage competition); *Id.* ¶¶ 21, 26 (given the rapidly evolving technology, line sharing requirements set forth by the FCC do not mandate a particular technological approach); *Id.* ¶ 27 (any transmission technology is acceptable for shared-line deployment so long as the technology does not degrade the voice portion of the loop).



marketplace.”<sup>33</sup> The FCC further stated: “We note that states are free to impose *additional, pro-competitive requirements* consistent with the national framework established in this order.”<sup>34</sup> Accordingly, the FCC’s Line Sharing Order empowers state commissions to look beyond the four corners of the Line Sharing Order when adopting measures implementing the minimum mandates of the Order.

Thus, the FCC set forth the minimum baseline framework for line sharing in the Line Sharing Order, and charged the states with the task of establishing additional requirements necessary to achieve the pro-competitive goals of the Act. For example, noting that the Act mandates both the FCC and *each state commission* to implement measures that encourage deployment of advanced services to all Americans, the Line Sharing Order provides that it is the obligation of state commissions to determine whether a specific technology is acceptable for deployment over a shared line.<sup>35</sup>

In order to ensure that CLECs have full and fair access to line sharing, the Commission will address line sharing over fiber-fed DLC systems in this proceeding. SBC, Ameritech-IL’s parent, has already begun deploying Project Pronto, which includes deployment of 20,000 new remote terminals “RTs” throughout its 13-state territory, including Illinois. This new network configuration will fundamentally alter the ability of CLECs to use line-shared loops to carry xDSL traffic from the customer’s premises to the central office “CO”. With Project Pronto, the portion of the loop from the

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<sup>33</sup> Line Sharing Order, ¶ 1.

<sup>34</sup> Line Sharing Order, ¶ 159 (emphasis added). *See also Id.* at 6 (Executive Summary) (holding “[s]tates may, at their discretion, impose additional or modified requirements for access to this unbundled network element, consistent with our national policy framework”).

<sup>35</sup> Line Sharing Order, ¶¶ 196-97.

RT to the CO will utilize exclusively fiber-fed systems.<sup>36</sup> Ultimately, SBC will use these RTs to provide broadband services to 77 million, or about 80 percent, of SBC's customers.<sup>37</sup> If CLECs are not given an opportunity to access line-shared traffic carried over Project Pronto fiber-fed DLC systems in the same manner as Ameritech-IL and its affiliates within Illinois, Ameritech-IL will enjoy a monopoly over advanced services for customers served by the fiber-fed systems.

If Ameritech-IL is successful in denying or delaying competitive use of line-shared loops, the competitive marketplace for advanced services will be substantially harmed. As the FCC has recognized:

If the incumbent is able to exploit its unique control over local loops to dominate the market for single line voice-data applications in the next year, we will have lost a unique opportunity to promote a competitive marketplace for advanced services. Thus, we find that delayed implementation will severely undermine the potentially pro-competitive effects of line sharing between incumbent and competitive LECs.<sup>38</sup>

If line sharing over fiber-fed DLC systems is not addressed in this proceeding, SBC and/or Ameritech-IL will be able to exploit its exclusive access to its fiber-fed DLC networks in the upcoming months, and effectively shut out CLECs from the advanced services marketplace in Illinois. The intent of the FCC's Line Sharing Order can only be achieved if this Commission grants CLECs the ability to line share over the fiber-fed DLC configuration.

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<sup>36</sup> Covad/Rhythms Exh. 2.6, SBC Investor Briefing No. 311, *SBC Announces Sweeping Broadband Initiative* (Oct. 18, 1999), at 4.

<sup>37</sup> *Id.* at 1.

<sup>38</sup> Line Sharing Order, ¶ 166.

## 2. UNE Remand Order

Ameritech-IL's line sharing tariff must also comply with the requirements of the FCC's UNE Remand Order. The unbundling requirements set forth in the FCC's UNE Remand Order, pursuant to § 251 of the Act, are "designed to create incentives for both incumbent and competitive LECs to innovate and invest in technologies and services that will benefit consumers through increased choices of telecommunications services and lower prices."<sup>39</sup> More specifically, the FCC sought to establish unbundling rules "to facilitate the rapid and efficient deployment of all telecommunications services, including advanced services."<sup>40</sup>

Under the FCC's UNE Remand Order, Ameritech-IL, along with other ILECs, are obligated to provide non-discriminatory access to UNEs and OSS. The FCC expressly stated in the Line Sharing Order that the ILEC obligation to provide access to OSS for xDSL-based services "falls squarely within an incumbent LEC's duty" under the Telecommunications Act of 1996.<sup>41</sup> Access to OSS is critical to a CLEC's ability to compete with the ILECs. The FCC determined that "if competing carriers are unable to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for network elements in substantially the same time and manner as the incumbent can for itself, competing carriers will be severely disadvantaged, if not precluded altogether, from fairly competing."<sup>42</sup>

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<sup>39</sup> UNE Remand Order, ¶ 5.

<sup>40</sup> *Id.* ¶ 14.

<sup>41</sup> Line Sharing Order, ¶ 172 (citing 47 U.S.C. § 251(c)(3) of the Act and the FCC's Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996)).

<sup>42</sup> Line Sharing Order, ¶ 172.

### **3. SBC/Ameritech Merger Conditions**

Ameritech-IL's line sharing tariff must also comply with the conditions put in place by this Commission and the FCC as part of their approval of SBC's merger with Ameritech. The FCC's merger conditions were intended to uphold the FCC's statutory obligation under the Telecommunications Act of 1996 to open local telecommunications networks to competition<sup>43</sup> by attempting to alleviate the potential harm to the public interest associated with the SBC/Ameritech merger.<sup>44</sup> The FCC concluded that, without the merger conditions, the SBC/Ameritech merger "will lead the merged entity to raise entry barriers that will adversely affect the ability of rivals to compete in the provision of retail advanced services thereby reducing competition and increasing prices for consumers."<sup>45</sup> Therefore, any evaluation of Ameritech-IL's satisfaction of its obligations under the Line Sharing Order must also be in compliance with the FCC's and this Commission's Merger Conditions Orders.<sup>46</sup>

## **II. LINE SHARING OVER PROJECT PRONTO LOOPS**

### **A. Unbundled Access to Project Pronto Architecture for Line Sharing**

#### **1. Rhythms' Position**

Ameritech-IL must offer the components of its fiber-fed next generation digital loop carrier ("NGDLC") network architecture, dubbed Project Pronto, to CLECs as UNEs, and must offer these UNEs to support line sharing. Ameritech-IL's deployment

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<sup>43</sup> See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd. 15,499, ¶ 1 (1996) ("Local Competition Order").

<sup>44</sup> Memorandum Opinion and Order, CC Docket No. 98-141 (Rel. Oct. 8, 1999), ¶ 357 ("Merger Conditions Order").

<sup>45</sup> *Id.* ¶ 32.

<sup>46</sup> Because the Plan of Record meetings under the Illinois merger conditions are still underway, it is too early to assess Ameritech-IL's compliance with the Illinois-specific requirements.

of Project Pronto equipment in its loop network in Illinois<sup>47</sup> will substantially affect the ability of CLECs to provide a full array of xDSL services to consumers in Illinois. In addition, Ameritech-IL's affiliate will be able to use the Project Pronto architecture to support line sharing. Therefore, Ameritech-IL must give CLECs access to Project Pronto under the non-discrimination and parity provisions of the Telecommunications Act of 1996.

The Commission has full authority to designate new UNEs by applying the FCC's necessary and impair standard. The Telecommunications Act of 1996 requires ILECs to offer unbundled access to proprietary elements of their networks to CLECs if those elements are necessary to a CLEC's ability to provide a competitive service; and to non-proprietary elements if lack of access to the elements would impair a CLEC's ability to provide a competitive service.<sup>48</sup> The FCC has found that a facility is proprietary only if an ILEC can demonstrate that it has invested resources (time, material, or personnel) to develop proprietary information or network elements that are protected by patent, copyright, or trade secret law. If a network element meets this standard, then access must be necessary for the ILECs' unbundling obligation to apply.

Project Pronto is not a proprietary technology under the FCC's standard. Each component of the Project Pronto architecture is designed to industry standards, and is manufactured for general distribution by SBC's suppliers. Ameritech-IL has configured these components in a non-proprietary arrangement. Thus, Project Pronto's components are not proprietary.

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<sup>47</sup> Rhythms Smallwood Cross Exh. 5.

<sup>48</sup> Telecommunications Act of 1996, § 251(d).

However, even if the Commission were to find the components of Project Pronto all proprietary, the “necessary” standard would be satisfied. Given the fact that Ameritech-IL is ready to deploy six billion dollars worth of equipment over the next three years, it is clear that no equivalent alternative could be accessed in the same time frame. The Project Pronto network will give Ameritech-IL’s advanced services affiliate the ability to provide xDSL services to 20 million consumers who are too far from the central office to obtain xDSL over home run copper. If CLECs are denied access to the Project Pronto network, those customers will remain inaccessible to competing advanced services providers. Ameritech-IL’s wholesale broadband offering is not an adequate substitute, because there is no opportunity for a CLEC to differentiate its service offering and there is no guarantee that the wholesale service will remain available permanently.

The FCC’s “impair” standard requires ILECs to give unbundled access to a network element if lack of access “would merely limit a carrier’s ability to provide the service it seeks to offer.”<sup>49</sup> The impair standard includes a materiality component, *i.e.*, there must be substantive differences between the use of a UNE and use of an alternative that would impair the competitive carrier’s ability to provide service.<sup>50</sup> In determining materiality, the FCC considers numerous factors, including the costs associated with alternatives, the different revenue-generating potential of different customer groups, the economies of scale and scope available to incumbents, the time associated with using alternatives, the relative quality of available alternatives, the extent to which a competitive carrier can provide ubiquitous service using alternative

facilities, and the effect on a company's technical network operations of denying access to a facility as an unbundled network element.

Should the Commission fail to make access to Project Pronto's functionalities available on an unbundled basis, the ability of CLECs to provide advanced services in Illinois will be significantly impaired and Ameritech-IL will gain a virtual monopoly on provision of ADSL to the residential market. Any alternatives available to Rhythms would be inferior in terms of cost, timeliness, quality of service and ubiquity.

No competitive advanced services provider has the financial resources to match SBC's investment, in whole or in part, in the Project Pronto architecture. And if such resources were available, time to market is a critical factor in the advanced services market, as the FCC has recognized.<sup>51</sup> While CLECs are forced to litigate in virtually every SBC state to get access to SBC's Project Pronto, SBC is expanding its market share by 4,000 new xDSL customers per day.<sup>52</sup> The ability of data CLECs to compete effectively and efficiently in providing advanced services is already being substantially impaired.

Without access to Project Pronto, data CLECs cannot provide ubiquitous xDSL services. The provisioning of xDSL over home run copper has distance limitations, whereas Project Pronto extends fiber to the RT, making xDSL available to nearly all of Ameritech-IL's voice customers. If CLECs are denied access to Project Pronto, data

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<sup>49</sup> UNE Remand Order, ¶ 44.

<sup>50</sup> *Id.* ¶ 51.

<sup>51</sup> UNE Remand order, at 91 ("any delay" a competitive LEC experiences in the advanced services market can impair its ability to deliver service).

<sup>52</sup> SBC Investor Briefing, October 23, 2000, at 4. While this briefing has not been admitted into the record of this proceeding, it is available on SBC's website and Rhythms has requested that the Commission take administrative notice of this information.

CLECs will only be able to provide xDSL via line sharing to customers located within 18,000 feet of a central office. The FCC has stated that where lack of access to a UNE “materially restricts the number or geographic scope of the customers” a CLEC’s ability to provide services is impaired.<sup>53</sup>

SBC has refused to allow Rhythms to line share over the Project Pronto architecture, even though SBC’s witness admitted it is feasible to “fiber share” voice and xDSL traffic on the same fiber in that architecture.<sup>54</sup> Mr. Lube acknowledged that the Alcatel NGDLCs being deployed throughout the SBC territory under Project Pronto—the Litespan 2000 and the Litespan 2012—can be configured to carry CLEC xDSL traffic and voice on a single fiber.<sup>55</sup>

The Project Pronto configuration will substantially alter the technical characteristics of a large number of loops that Rhythms needs to provide xDSL services via line sharing. Ameritech-IL’s witness admitted that the continued use of home run copper after Project Pronto may not be viable due to cross talk problems created by the card-based DSLAMs at the RT.<sup>56</sup> Any negative effects on competitors caused by Project Pronto deployment will be widespread and devastating to competition as SBC is rolling out hundreds of thousands of new fiber cables<sup>57</sup> and 20,000 new RTs housing xDSL-capable NGDLC equipment throughout its 13-state territory, including Illinois.<sup>58</sup> SBC will not guarantee long term that home run copper will continue to be available as a means of line sharing.

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<sup>53</sup> *Id.* at 97.

<sup>54</sup> Hearing Tr. (Lube) at 305-309.

<sup>55</sup> *Id.*

<sup>56</sup> Hearing Tr. (Lube) 247-255.

<sup>57</sup> Rhythms Smallwood Cross Exh. 4 (Project Pronto M&P), at 11-120.



The FCC has found that lack of access to the high frequency portion of the local loop “materially diminishes the ability of competitive LECs to provide certain kinds of advanced services to residential and small business users, delays broad facilities-based market entry, and materially limits the scope and quality of competitor service offerings.”<sup>59</sup> The ability to provide both voice and data on a single loop is a substantial competitive advantage, because provisioning times are greatly reduced and because CLECs do not have to pay for a separate loop to provide xDSL services.<sup>60</sup> Therefore, the Commission should allow CLECs to purchase Project Pronto components as UNEs or CLECs will be put at a competitive disadvantage.

Ameritech-IL's primary basis for opposing line sharing over Project Pronto is that the FCC did not expressly require Ameritech-IL to offer line sharing over a fiber-fed configuration. However, when the FCC issued the Line Sharing Order, it was not technically possible to provide line-shared xDSL services over fiber-fed DLC. Further, SBC witness Mr. Lube admitted that at the time the Line Sharing order was pending, SBC did not reveal its plans for Project Pronto to the FCC.<sup>61</sup> Therefore, the FCC could not have ruled, and did not rule, on the feasibility of line sharing over a fiber-fed NGDLC architecture.

Ameritech-IL claims that line sharing, as ordered by the FCC, applies only to voice and data carried on a single copper loop. However, the evidence in this proceeding shows that the Alcatel NGDLCs being deployed throughout the SBC

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<sup>58</sup> Rhythms Exh. 2.11, Riolo, at 57.

<sup>59</sup> Line Sharing Order, ¶ 5.

<sup>60</sup> Rhythms Exh. 8.0, Riolo, at 5.

<sup>61</sup> Hearing Tr. (Lube) 314.

territory under Project Pronto—the Litespan 2000 and the Litespan 2012—could be configured to carry CLEC xDSL traffic and voice on a single fiber.<sup>62</sup> Ameritech-IL further contends that even if voice and data were carried on a single fiber, such arrangement is still not line sharing because the transmissions would not be carried on a specified physical path.<sup>63</sup>

Ameritech-IL's argument is specious. Voice signals and xDSL signals of all types, including ADSL ATM bitstreams, can now be carried on a common fiber through time division multiplexing in which signals are assigned to time slots rather than physical dedicated pathways.<sup>64</sup> The FCC's line sharing order does not require that the voice and data transmissions be carried on a single physical path. Further, the fact that voice and data multiplexed on a fiber occupying time slots available rather than a pre-determined physical path does not affect the character of the service or the voice or data signal. Thus, it is technically feasible for xDSL and voice service to be line shared on loops configured through Project Pronto.

If CLECs are not allowed to purchase Project Pronto elements as UNEs rather than as a service, they will be limited to reselling Ameritech-IL's chosen xDSL type.<sup>65</sup> CLECs would be foreclosed from offering any xDSL capabilities other than those supported by Ameritech-IL's equipment. Access to the subloop via standalone DSLAMS collocated in the RT is not a feasible alternative to collocating line cards in the NGDLC in the RT. Collocation of a DSLAM in the RT may be foreclosed by the lack of

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<sup>62</sup> *Id.*

<sup>63</sup> Ameritech-IL Exh. 6.0, Lube, at 4 .

<sup>64</sup> Rhythms Exh. 8.0, Riolo, at 58.

<sup>65</sup> Rhythms Exh. 8.0, Riolo Direct, at 55.

space in RTs.<sup>66</sup> The primary RT housing that Ameritech-IL is deploying is cabinets, the option with the least space. In addition, the expense of collocating a standalone DSLAM at the RT could place Rhythms at a substantial financial disadvantage to Ameritech-IL, or its advanced services affiliate, in the provision of xDSL services.

Ameritech-IL witness Lube admitted that Rhythms could access loop sub-elements by plugging in line cards into the Project Pronto NGDLC at the RT.<sup>67</sup> Therefore, it is technically feasible for Ameritech-IL to allow CLECs to access UNEs by collocating line cards in the NGDLC equipment in the RT. The Commission should require Ameritech-IL to offer to place line cards (owned by either Ameritech-IL or the CLEC) in the NGDLC at the RT on behalf of Rhythms, or allow Rhythms to own and install its own line cards.

Finally, the evidence in this case demonstrates that Ameritech-IL's assertions that it may discontinue Project Pronto in Illinois if CLECs are allowed to own the line cards is an empty threat. Nothing in SBC's public statements or actual deployment suggests that SBC has any real plans to dismantle Project Pronto. An extensive review of SBC's public statements to regulators, press, investors and the Securities and Exchange Commission reveal no "hedging" on Project Pronto deployment plans. SBC is fully committed to Project Pronto and the Commission's decision to require unbundling will not derail that effort.

By denying CLECs access to line sharing on the fiber portion of the loop, Ameritech-IL continues to attempt to preserve its monopoly over local telecommunications services. When SBC provides xDSL to its own retail voice

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<sup>66</sup> Rhythms Exh. 1.0, Murray.

customer there is no arbitrary delineation of the loop. Such discriminatory and anti-competitive conduct is contrary to the FCC's Line Sharing Order, has no technical basis, and should not be allowed.

## **2. Ameritech-IL's Position**

Ameritech-IL takes the position that the ICC has no authority to order access to the components of its Project Pronto architecture as UNEs because it is pre-empted by the Telecommunications Act of 1996 and by the FCC's orders. Ameritech-IL relies on the FCC's approval of a limited waiver of the SBC/Ameritech merger conditions allowing SBC to own the line cards in the NGDLC equipment.

In its *Waiver Order*, the FCC stated that "allowing SBC's incumbent LECs to own, install, and operate" the line cards used with Project Pronto NGDLCs would promote the pro-investment and pro-competitive objectives of the Act.<sup>68</sup> Ameritech-IL argues that the FCC has established, as a matter of federal law, that ILEC ownership and control of line cards, when coupled with the deployment of Project Pronto and the pro-competitive commitments made by SBC in connection with such ownership, affirmatively promotes the achievement of Congress' purposes and objectives under the Act. Ameritech-IL then concludes that allowing CLECs to own the line cards would stand "as an obstacle to the accomplishment off the purposes and objectives of Congress" and thus is preempted.<sup>69</sup>

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<sup>67</sup> Hearing Tr. 335-338.

<sup>68</sup> Second Memorandum Opinion And Order CC Docket No. 98-141 (rel. September 8, 2000) ¶¶ 1-2, 10.

<sup>69</sup> *Geier v. American Honda Motor Co.*, 120 S. Ct. 1913, 1921 (2000)( quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

Ameritech-IL argues that even if the FCC's *Waiver Order* did not preempt this Commission from adopting the CLECs' Project Pronto UNE/line card collocation proposal, the record evidence is insufficient for the Commission to find, as it must under Section 261(c) of the Act, that such a state-imposed requirement is "necessary" to "further competition in the provision of telephone exchange service or exchange access." Ameritech-IL asserts that the Project Pronto architecture does not have to be unbundled for CLECs to be able to provide xDSL services to their end users: CLECs have some other options for offering xDSL services, including Ameritech-IL's Broadband Service offering and continuing to use all-copper loops to provide xDSL services. In addition, CLECs may choose to collocate their own stand-alone DSLAM equipment in Ameritech-IL's RTs, where space is available and other technical requirements are met. CLECs may build their own facilities to provide xDSL services to end users.<sup>70</sup> Given these options, Ameritech-IL asserts that unbundling of Project Pronto does not meet the "necessary" standard of Section 261(c).

Ameritech-IL points out that the FCC held that ILECs "do not retain a monopoly position in the advanced services market."<sup>71</sup> Thus, Ameritech-IL argues that the mere fact that an ILEC owns a facility does not automatically make that facility a "bottleneck," and that Congress and the Supreme Court have recognized that, rather than assuming all ILEC facilities are bottlenecks, regulators must analyze the requested UNE under standards set forth by the FCC before they can require the unbundling or sharing of any part of an ILEC's network.<sup>72</sup> Ameritech-IL's position is that the Commission should

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<sup>70</sup> Ameritech-IL Ex. 6.1 (Lube) at 13-14.

<sup>71</sup> *UNE Remand Order*, ¶ 308.

<sup>72</sup> See 47 U.S.C. § 251(d)(2); *AT&T Corp.*, 119 S. Ct. at 734-36; see also *GTE*, 205 F.3d at 422-23.

exercise “regulatory restraint” and reject the CLECs’ request for access to Project Pronto as UNEs, and for the ability to own and collocate line cards, so as to avoid the possibility of altering the successful deployment of advanced services.”

Ameritech-IL states that the LiteSpan 2000 equipment that it principally plans to deploy with Project Pronto does not perform wave division multiplexing, and further states that in order to provide line sharing over Project Pronto, Ameritech-IL would have to purchase and install additional equipment. Ameritech-IL argues that it is not required to deploy any type of equipment for Project Pronto that is *different* from or additional to the equipment Ameritech-IL plans to deploy, under the Eighth Circuit’s decisions in Iowa Utilities Board I and II.<sup>73</sup>

Ameritech-IL also asserts that the Commission should take no action because this issue is pending before the FCC in the *Collocation FNPRM*.<sup>74</sup> In that case, the FCC has asked parties to address Rhythms’ proposal that CLECs be permitted to collocate line cards in RTs.<sup>75</sup> Ameritech notes that issues regarding CLEC access to RTs and NGDLCs are also before the FCC.<sup>76</sup> The FCC has sought comment on “whether the deployment of new network architectures...necessitates any modification to or clarification of the [FCC’s] local competition rules, particularly our rules relating to unbundled transport, loops, and subloops.” The FCC may address in the *NGDLC*

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<sup>73</sup> *Iowa Utils Bd. v. FCC*, 120 F. 3d 753 (8<sup>th</sup> Cir. 1997), *aff’d in part, rev’d in part sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) (“IUB I”); *Iowa Utils. Bd. v. FCC*, 219 F. 3d 744 (8<sup>th</sup> Cir. 2000) (“IUB II”).

<sup>74</sup> *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket 98-147, Order On Reconsideration And Second Further Notice Of Proposed Rulemaking In CC Docket No. 98-147 And Fifth Further Notice Of Proposed Rulemaking In CC Docket No. 96-98, (rel. August 9, 2000) ¶ 82.

<sup>75</sup> See *Collocation FNPRM*, ¶ 109; *Id.*, ¶ 82 (seeking comment on whether line cards are “equipment necessary for interconnection or access to unbundled network elements” as required by Section 251(c)(6)).

*FNPRM* as well as the *Collocation FNPRM* whether the unbundling of Project Pronto facilities is technically feasible and may be required consistent with the Act.

Ameritech-IL argues that even if the Commission is not preempted from ruling on Project Pronto issues, this Commission must complete further analysis. Before a state commission can require a new UNE, it must conduct an inquiry to determine whether the proposed UNE meets the governing legal standards, including the “necessary” and “impair” tests of Section 251(d)(2) of the 1996 Act and FCC Rule 317. The analysis must “consider[s] the totality of the circumstances,” including market conditions and the availability of alternatives to the UNE to determine whether lack of access will “materially” diminish CLECs’ ability to provide the services they seek to offer.<sup>77</sup>

Ameritech-IL argues that Project Pronto need not be unbundled under such analysis because Ameritech-IL will offer meaningful alternatives to the “Project Pronto UNE” by providing CLECs with wholesale “Broadband Services” for data service and for combined voice and data services, both at UNE rates.<sup>78</sup> Further, Ameritech-IL argues that the CLECs’ proposal to unbundle the bulk of the Project Pronto network conflicts with the *UNE Remand Order*, because the proposed new “Project Pronto UNE” would include the functionality of the OCD, which is an ATM switch; ATM switches are packet switches.<sup>79</sup> The FCC held in the *UNE Remand Order* that an ILEC is not required to provide packet switches unless four conditions are met:

- 1) the incumbent LEC has deployed digital loop carrier systems, or any other system in which fiber optic facilities

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<sup>76</sup> August 10, 2000 Fifth Further Notice of Proposed Rulemaking in CC Docket 96-98.

<sup>77</sup> 47 C.F.R. 51.317(b)(4) Section 251(d)(2) and Rule 317; *UNE Remand Order*, ¶¶ 62, 142.

<sup>78</sup> See *Waiver Order*, App. A; Ameritech-IL Ex. 6.0 (Lube) at 5, 8-9; Ex. 6.1 (Lube) at 6, 13-14.

<sup>79</sup> *Waiver Order*, ¶ 18; see also *UNE Remand Order*, ¶ 303.

replace copper facilities in the distribution section (e.g., end office to remote terminal, pedestal or environmentally controlled vault);

2) there are no spare copper loops capable of supporting the xDSL services the requesting carrier seeks to offer;

3) the incumbent LEC has not permitted a requesting carrier to deploy a DSLAM at the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points as defined by § 51.319(b); and

4) The incumbent LEC has deployed packet switching capability for its own use.<sup>80</sup>

Ameritech-IL asserts that all four of these conditions will normally not exist in Ameritech-IL's Project Pronto network. Spare copper loops will often be available to the CLECs. Ameritech-IL claims that its voluntary commitments, adopted as conditions in the FCC's *Waiver Order*,<sup>81</sup> enhance the CLECs' opportunity to collocate their own DSLAMs at or near Ameritech-IL's RT sites. Ameritech-IL argues that it is not deploying packet switching equipment for its own use. Instead, the Project Pronto NGDLC and OCD are being deployed for CLECs' use in provisioning retail xDSL services to end users.<sup>82</sup>

Finally, Ameritech-IL's position is that it is not technically feasible to unbundle the Project Pronto network architecture. A single end user's xDSL service will not occupy a consistent end-to-end path through this architecture, or have a consistent interface at each end of the path. When a CLEC provides xDSL service to a single end user using

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<sup>80</sup> 47 C.F.R. 51.319(c)(3)(B); *UNE Remand Order*, ¶ 313; Ameritech Illinois Ex. 61. (Lube) at 14-17.

<sup>81</sup> *Waiver Order*, ¶¶ 34, 35, 61.

<sup>82</sup> Ameritech-IL Ex. 6.1 (Lube) at 16-17.



the Broadband Service, the single end user's xDSL service will be partially a physical path and partially a virtual path through these various network components. Therefore, the end user's xDSL service can be physically accessed in some parts of the end-to-end path, but cannot be physically accessed in other parts. In particular, Ameritech-IL claims that the end user's xDSL service cannot be accessed as a specific, unique unbundled network element at the central office connection to the CLEC (*i.e.*, the OCD port).<sup>83</sup>

Ameritech-IL notes that the *UNE Remand Order* (at ¶¶ 101-115) sets out additional factors which should be considered when making an unbundling determination, including whether the unbundling requirement would: (1) promote rapid introduction of competition in all markets; (2) promote facilities-based competition, investment and innovation; (3) reduce regulation; and, (4) promote certainty in the market. Ameritech-IL believes that consideration of these factors reconfirms that Ameritech-IL should not be required to unbundle Project Pronto.

Ameritech-IL also states that unbundled loops are not even the subject of Ameritech-IL's HFPL UNE tariff and are not at issue in this proceeding. Moreover, neither the Act nor the FCC's rules provide a CLEC with a right to designate and obtain access to a specific copper wire or fiber strand pair in an incumbent LEC's network. Both the FCC and this Commission (in Docket No. 99-0511) have recognized that certain loop facilities served by integrated loop digital carrier ("IDLC") systems cannot physically be unbundled from those systems, but instead must be "virtually" unbundled

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<sup>83</sup> Ameritech-IL ex. 6.1 (Lube) at 11.

through demultiplexing at the central office or the provision of a substitute loop.<sup>84</sup> For this reason, the FCC did not define the loop network element as a designated, specific copper wire or fiber strand pair, but instead defined it as “a *transmission facility* between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer premises.”<sup>85</sup> Ameritech-IL's unbundled loop offerings fully comply with the FCC's definition and are already incorporated into the CLECs' interconnection agreements, which are binding on the parties under Section 252(a) of the Act.

Accordingly, Ameritech-IL asserts that a Commission ruling that Ameritech-IL must provide CLECs with access to a specific copper wire or fiber strand pair designated by the CLEC would be both beyond the scope of this proceeding and contrary to federal law. To the extent that the CLECs are attempting to obtain something more from Ameritech-IL with respect to their access to unbundled loops than is already provided for in those CLECs' interconnection agreements (or in Ameritech-IL's UNE loop tariff), the Commission must reject that attempt.

### **3. Staff's Position**

Staff's position is that Project Pronto is non-proprietary, that it satisfies the “impair” standard, and that access to the Project Pronto architecture should be unbundled.

The Project Pronto architecture is comprised of components designed to industry standards that are available from commercial suppliers.<sup>86</sup> Therefore, Project Pronto is

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<sup>84</sup> See *First Report and Order*, ¶ 383-384.

<sup>85</sup> 47 C.F.R. § 51.319(a)(1).

<sup>86</sup> Ameritech Exhibit No. 6.0 at 3 - 4, 25; *UNE Remand Order*, ¶36

not proprietary. Accordingly, the propriety of unbundling the Project Pronto architecture should be evaluated according to the “impair” standard. Ameritech-IL’s offer of Project Pronto architecture on a bundled, wholesale service basis is insufficient to meet Ameritech-IL’s obligations under the Telecommunications Act of 1996, which strongly favors access to unbundled elements.<sup>87</sup> The Commission should not consider the wholesale service offering as a substitute when conducting its unbundling analysis.

The Commission must consider what sunk costs a CLEC would incur if it attempted to provision the service it seeks to offer using alternative elements.<sup>88</sup> Replicating the fiber portions of the Project Pronto architecture would be prohibitively expensive. SBC plans to invest six billion dollars in its 13-state region on Project Pronto.<sup>89</sup> The same cost factor applies to instances where Ameritech-IL has spare fiber strands that it could sell to CLECs as dark fiber. It is commonly accepted that attaching the necessary electronics to “light” the fiber is a very expensive undertaking.

The Commission must also consider the delays associated with self-provisioning elements, as opposed to obtaining them as unbundled elements from ILECs.<sup>90</sup> If such delays exceed six months, this factor supports unbundling.<sup>91</sup> In the absence of unbundled access to the Project Pronto architecture, CLECs would experience significant delays in self-provisioning service. Consideration of this factor favors unbundling.

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<sup>87</sup> 47 U.S.C. §251(c)(3).

<sup>88</sup> *UNE Remand Order*, ¶¶72, 74.

<sup>89</sup> Ameritech-IL Exhibit No. 6.0 at 3.

<sup>90</sup> *UNE Remand Order*, ¶¶89-90, 95.

<sup>91</sup> *Id.*, ¶91.

Quality of service issues are also relevant to an unbundling analysis. The Project Pronto architecture is intended to enable Ameritech-IL to offer xDSL service to a greater number of customers.<sup>92</sup> Lack of access to Project Pronto architecture will result in relatively slower data transfer speeds.

If the Commission determines that use of an alternative element materially restricts the number or geographic location of customers that a CLEC can serve, the network elements should be unbundled.<sup>93</sup> This factor presents a compelling case for unbundling Project Pronto. Project Pronto is intended to enable SBC/Ameritech to reach more customers with xDSL services than can be reached with the current network.<sup>94</sup> Forcing CLECs to use alternative elements would materially restrict a CLEC's ability to offer xDSL service. These restrictions on the number and location of customers CLECs can serve without Project Pronto strongly compels unbundling Project Pronto.

#### **4. Commission Analysis and Conclusion**

The Commission determines that the CLECs should have access to the components of Ameritech-IL's fiber-fed NGDLC system, known colloquially as "Project Pronto," as unbundled network elements. The Commission clearly has both state and federal authority under federal statute, FCC rules and decisions, and state statute to identify and mandate additional UNEs. The Commission also concludes that, in light of the FCC's repeated findings regarding state commissions' authority and its expressed intention to honor state commission orders regarding unbundling, it is appropriate to

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<sup>92</sup> Staff Exhibit No. 1.0 at 3.

<sup>93</sup> *UNE Remand Order*, ¶¶97-98.

<sup>94</sup> Staff Exhibit No. 1.0 at 3.

identify additional elements even if the same issues are being considered at the federal level.

The Commission agrees with Staff and Rhythms that it is technically feasible to provide Project Pronto as UNEs. Therefore, the Commission must determine whether unbundling is required under the FCC's "necessary and impair" standard. Because the components of the Project Pronto system are non-proprietary, the proper legal test to apply is the "impair" standard. The Commission believes that access to this new architecture would also satisfy the more stringent "necessary" standard if it were necessary to apply that analysis.

Under the FCC's "impair" standard, a network element must be unbundled if lack of access "would merely limit a carrier's ability to provide the service it seeks to offer."<sup>95</sup> The impairment must be material; *i.e.*, there must be substantive differences between the use of a UNE and use of an alternative that would impair the competitive carrier's ability to provide service.<sup>96</sup> The Commission may consider considers numerous factors in applying the impair standard, including the costs associated with alternatives, the different revenue-generating potential of different customer groups, the economies of scale and scope available to incumbents, the time associated with using alternatives, the relative quality of available alternatives, the extent to which a competitive carrier can provide ubiquitous service using alternative facilities, and the effect on a company's technical network operations of denying access to a facility as an unbundled network element.<sup>97</sup>

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<sup>95</sup> Staff Exhibit No. 10, at 3.

<sup>96</sup> *Id.* ¶ 51.

<sup>97</sup> UNE Remand Order, ¶¶ 72-101.

The evidence in this case demonstrates that there is a substantive difference between providing xDSL based services by use of components of Ameritech-IL's new Project Pronto network and the available alternatives.

**Ameritech-IL's wholesale broadband service offering.** Ameritech-IL's wholesale broadband service offering is not an adequate substitute for access to the Project Pronto network elements as UNEs. The wholesale service offering leaves all control in the hands of Ameritech-IL as to the types of xDSL service that may be provided. Moreover, unlike UNEs, services are not subject to arbitration under the Telecommunications Act of 1996, and may be modified or withdrawn unilaterally by Ameritech-IL. CLECs would be restricted to reselling only those xDSL services without an opportunity to provide different types of xDSL services and different qualities of service.<sup>98</sup>

**Collocating DSLAM equipment.** Although collocation offers an alternative, it is a costly alternative that will not be not uniformly available in every RT. Collocation is limited by space constraints, is quite expensive (and may even be uneconomic in many or most RT locations), and takes considerable time to deploy.<sup>99</sup>

**Self-provisioning.** It would be nearly impossible for any CLEC to approach the magnitude of SBC's Project Pronto effort in terms of cost and geographic scope. Even if equivalent financial resources were available, self-provisioning would cause market entry to be so late that meaningful competition would be precluded.

The compelling reason to unbundle Project Pronto is the inability of CLECs to offer ubiquitous xDSL-based services without access to the Project Pronto as UNEs.

Project Pronto is being implemented to enable Ameritech-IL to provide xDSL services to customers it is unable to serve using all-copper loops and existing DLC systems.<sup>100</sup> The Commission is not persuaded by Ameritech-IL's allegations that it is implementing Project Pronto for the benefit of CLECs. The evidence in this case clearly and unequivocally demonstrates that SBC is deploying Project Pronto to generate significant savings in maintenance costs and to increase the ability of its data affiliates to serve customers with xDSL service. Project Pronto will enable SBC's affiliates to reach the approximately 20 million customers who live more than 18,000 feet from a CO.<sup>101</sup> If Ameritech-IL is permitted to deny access to CLECs, then no carrier other than Ameritech-IL will be able to provide xDSL services to those customers with loops in excess of 18,000 feet. Ameritech-IL argues that the FCC has found that it is not a monopoly provider of advanced services. The Commission wants to ensure that the situation does not change. If CLECs are denied UNE access to Project Pronto, Ameritech-IL would gain such significant market advantage that it would become a monopoly provider of advanced services.

The Commission hereby requires Ameritech-IL to make available to competitive providers nondiscriminatory access, at just and reasonable rates, to Project Pronto UNEs as follows:

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<sup>98</sup> Rhythms/Covad Exh. 2.11, Riolo Surrebuttal at 18:23.

<sup>99</sup> Rhythms Exh. 2.0, Riolo Dir. at 67:20–68:14.

<sup>100</sup> Ameritech-IL Exh. 6.0, Lube Direct, at 3:11.

<sup>101</sup> *Id.*

- a. Lit Fiber Subloops between the RT and the OCD in the CO consisting of one or more PVPs ("permanent virtual paths") and/or one or more PVCs ("permanent virtual circuits") at the option of the CLEC;
- b. Copper Subloops consisting of the following segments:
  - i. the copper subloop from the RT to the NID at the customer premises;
  - ii. the copper subloop from the RT to the SAI ("serving area interface");
  - iii. the copper subloop from the SAI to the NID at the customer premises.
- c. ADLU line cards owned by the CLEC and collocated in the NGDLC equipment in the RT;
- d. ADLU line cards owned by the ILEC in the NGDLC equipment in the RT;
- e. A port on the OCD in the CO; and
- f. Any combination thereof, including a line-shared xDSL loop from the OCD port to the NID.

The Commission finds that Ameritech-IL has failed to demonstrate that line sharing over its Project Pronto network is not technically feasible. As a matter of fact, Ameritech-IL's own witness established that line sharing over Project Pronto is feasible.<sup>102</sup> Ameritech-IL complains that it cannot be required to provide new or different equipment than it has in place. However, in deploying this new network, Ameritech-IL must comply with its FCC- and Commission-mandated interconnection



unbundling and access obligations. If Ameritech-IL has failed to deploy all equipment necessary to meet these obligations, it must do so now. Ameritech-IL asserted that it is installing this network, not for its own benefit, but for the benefit of CLEC providers of xDSL based services. If that is so, Ameritech-IL should provide CLECs with the access they need and are willing to purchase.

The Project Pronto configuration will substantially alter the technical characteristics of a large number of loops in Illinois. Ameritech-IL's witness admitted that the simultaneous transmission of voice and xDSL over a single fiber is technically feasible. If CLECs do not have access to line shared loops over the Project Pronto architecture, they will be constrained in the number of customers they can serve do to loops that are too long to support xDSL service. Finally, the continued use of home run copper after Project Pronto may not be viable due to cross talk problems created by the card-based DSLAMs at the RT.<sup>103</sup> Such a result would be devastating to competition in Illinois because of the magnitude of the Project Pronto deployment.<sup>104</sup> SBC has made only very short-term commitments that home run copper will continue to be available as a means of line sharing. Should Ameritech-IL begin to phase out its copper loops, and continue to refuse line sharing over its Project Pronto network, Ameritech-IL could effectively bar all other providers from large segments of the potential market for xDSL based services. The Commission therefore directs Ameritech-IL to support line sharing over its Project Pronto network in the form of the UNEs discussed above, at just and reasonable prices.

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<sup>102</sup> Hearing Tr. (Lube) 308:5.

<sup>103</sup> Hearing Tr. (Lube) 247-255.

## **B. Collocation of CLEC Line Cards in Project Pronto Architecture**

### **1. Rhythms' Position**

CLECS must be allowed to collocate equipment, including line cards, that would lower the cost of providing advanced services, and increase the range of services available to their customers.<sup>105</sup> Section 251(c)(6) of the Act requires ILECs to provide, on a nondiscriminatory basis and at just and reasonable rates, physical collocation of equipment necessary for interconnection or access to unbundled network elements. The FCC determined in its Advanced Services Order that the pro-competitive provisions of the Act are technology-neutral and apply to advanced data services as well as to voice services.<sup>106</sup> The standards set by the FCC serve only as a floor, and the authority to resolve other issues not addressed in the Advanced Services Order is expressly reserved for state commissions.<sup>107</sup>

The FCC is receiving comments on the meaning of the term “necessary” in regard to line cards as well as other issues.<sup>108</sup> Rhythms has filed comments in that proceeding proposing that access to a network element is necessary so long as it is “directly related to” interconnection and access to unbundled elements, and an inability to collocate such equipment would interfere with a CLEC’s ability to compete effectively and efficiently. This Commission should adopt this same standard because it meets the

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<sup>104</sup> Rhythms Smallwood Cross Exh. 4 (Project Pronto M&P), at 11-120.

<sup>105</sup> *Id.* ¶ 29. Rhythms/Covad Exh. 2.11, Riolo Surrebuttal at 19:11.

<sup>106</sup> *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Docket No. 8-147, First Report and Order and Further Notice of Proposed Rulemaking (Mar. 31, 1999) (“Advanced Services Order”).

<sup>107</sup> Rhythms Exh. 9.0, Ayala Direct, Attachment A.

<sup>108</sup> *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 and 96-98 (rel. Aug. 10, 2000) (“Collocation Order on Reconsideration”).

requirements of the Act and furthers the goals of facilitating competition and the deployment of advanced services.

The evidence in this proceeding demonstrates that line cards are necessary for interconnection or access to unbundled network elements. Line cards are the point and method of interconnection with ILEC networks and access to UNE subloops, substituting for a traditional standalone DSLAM when the loop is served by a transmission facility that contains fiber optics. The line cards also contain the splitter functionality necessary to support line sharing. Without the ADLU line cards, the NGDLC equipment in the RT cannot perform DSLAM and splitter functions. Therefore, the electronics on the line cards are necessary to generate and receive the data transmissions carried across the unbundled loop from the end user through the RT back to the central office. Without the ability to collocate line cards in the NGDLC chassis at the RT, xDSL providers would not be able to compete efficiently and effectively with the advanced services of the ILECs or their advanced services affiliates for several reasons.

First, it would be impossible to place a standalone DSLAM in all of Ameritech-IL's RTs, due to either space exhaustion or economic infeasibility. Second, the speed and reach of the xDSL service is tied directly to the length of copper loop over which xDSL is deployed. Competitors who must collocate a DSLAM at the CO would be disadvantaged because Ameritech-IL's affiliate would be able to access line cards at the RT, and therefore provide xDSL over a significantly shorter copper facility. As a result, Ameritech-IL's affiliate would be able to provide a higher speed offering over a wider area to consumers than would a CLEC. Third, CLECs would be foreclosed from

offering any xDSL type, feature or functionality other than those that Ameritech-IL chooses to support with its line cards. Finally, CLECs might be altogether precluded from offering xDSL services over home-run copper due to the interference caused by the xDSL signals generated at the RT locations.

Based on all of these factors, collocation of CLEC line cards in the NGDLC equipment in the RT is necessary. Thus, the Commission should order Ameritech-IL to allow such collocation.

## **2. Ameritech-IL's Position**

Ameritech opposes CLEC ownership of line cards in Project Pronto on the basis that such ownership does not meet the necessary test governing collocation in Section 251(c)(6) of the Act. Under that test, a state commission can impose new collocation requirements only if it determines that collocation is "necessary for interconnection or access to unbundled network elements."<sup>109</sup>

Ameritech-IL argues that line cards are not be used, let alone necessary, for the exchange of traffic with Ameritech-IL's network, and thus would not be necessary for interconnection,<sup>110</sup> or for access to a UNE.<sup>111</sup> Rather, Ameritech-IL argues that CLECs would use such line cards to access the packet switching functionality of Project Pronto NGDLCs. The FCC has declined to classify packet switching facilities as UNEs.

Further, Ameritech-IL argues that the ADLU card is unable to access any actual UNE at an RT site, or provide interconnection between Ameritech-IL's network and a CLEC's network for the mutual exchange of traffic. Ameritech states that there are

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<sup>109</sup> 47 U.S.C. 251(c)(6).

<sup>110</sup> See 47 C.F.R. 51.5; Ameritech-IL Ex. 6.1 (Lube) at 23-24.

<sup>111</sup> Ameritech-IL Ex. 6.1 (Lube) at 23-24.

currently only two UNEs that may be accessible to a CLEC at an RT site: the first is unbundled dark fiber; the second is unbundled copper distribution subloops (the full subloop or the high frequency portion of the subloop). These unbundled subloops are available at an RT only if the CLEC's collocated equipment is cabled to the nearest cross-connect access point to those subloops (e.g., the SAI cabinet), or to the "engineering control splice."<sup>112</sup> Ameritech-IL claims that a CLEC cannot obtain access to either of the UNEs by placing an ADLU card in Ameritech-IL's NGDLC RT equipment. Further, Ameritech-IL states that Project Pronto is not currently configured to allow cross-connect of the line card to any UNE at the RT. Instead, the ADLU card can only be physically inserted into a slot within the NGDLC. In any event, even if it were able to access UNEs or interconnect two carriers' networks for the exchange of traffic, the ADLU card is not necessary for performing these tasks.

Moreover, Ameritech argues that the line card is merely a sub-component of an NGDLC, with no stand-alone functionality until it is integrated with the rest of the software and hardware in the NGDLC system,<sup>113</sup> and the FCC has not previously required collocation of such sub-components of equipment.<sup>114</sup> Thus, Project Pronto NGDLC line cards cannot qualify as equipment that is used for interconnection or access to UNEs, or equipment that is "necessary" for such interconnection or UNE access as required by Section 251(c)(6) of the Act.<sup>115</sup>

Ameritech-IL also asserts that there would be operational problems associated with allowing CLECs to own or control line cards for use with Ameritech-IL's Project

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<sup>112</sup> Ameritech-IL Ex. 6.1 (Lube) at 23.

<sup>113</sup> Ameritech-IL Ex. 6.1 (Lube) at 18-23.

<sup>114</sup> *Id.*

Pronto NGDLCs, such as premature exhaust of the NGDLC.<sup>116</sup> CLEC ownership of the ADLU cards would complicate Ameritech-IL's provisioning processes and present ongoing maintenance problems. All of these problems could create increased costs for both Ameritech-IL and the CLECs. Ameritech-IL asserts that these increased costs and operational issues would require SBC to re-evaluate and/or refocus its deployment plans for Project Pronto and could delay or eliminate the continued deployment of Project Pronto in Illinois.<sup>117</sup>

### 3. Staff's Position

The Staff advocates the collocation of CLEC line cards in the Project Pronto architecture at RTs. The FCC recognizes that line sharing over Project Pronto architecture is technically feasible and has ordered modifications to SBC's current wholesale broadband offering to allow for line sharing over copper subloops configured through facilities employing NGDLC.<sup>118</sup> The FCC also found that "[t]o the extent that [FCC mandated] conditions impose fewer or less stringent obligations on SBC than the requirements of any...state decisions or any other pro-competitive statute or policy, nothing in these conditions shall relieve SBC/Ameritech from the requirements of the Act or those decisions."<sup>119</sup>

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<sup>115</sup> *Id.*

<sup>116</sup> Ameritech-IL Ex. 6.1 (Lube) at 24-25.

<sup>117</sup> Ameritech-IL Ex. 6.1 (Lube) at 27-28.

<sup>118</sup> Staff Opening Brief relies for this proposition on *Second Memorandum Opinion and Order, In the Matter of Ameritech Corp/SBC Communications, Inc - For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules* CC Docket No. 98-141 (September 7, 2000).

<sup>119</sup> *Id.*

The Commission has previously addressed this issue. In the Ameritech/Covad Rhythms arbitration, Docket Nos. 00-0312/0313, the Commission allowed Covad and Rhythms to choose the plug-in cards to be installed at Project Pronto RTs.<sup>120</sup> The Staff recommends that the Commission decide this matter consistent with the arbitration award in Docket Nos. 00-0312/0313.

#### **4. Commission Analysis and Conclusion**

The Commission finds that line cards for the provision of xDSL-based services fit the definition of equipment necessary for the provision of advanced services. The FCC has found that competitive providers of advanced services should be allowed to collocate integrated equipment that would lower the cost of providing advanced services, and increase the range of services available to their customers.<sup>121</sup> Section 251(c)(6) of the Act requires ILECs to provide, on a nondiscriminatory basis and at just and reasonable rates, physical collocation of equipment necessary for interconnection or access to UNEs. The FCC determined in its Advanced Services Order that the pro-competitive provisions of the Act are technology-neutral and apply to advanced data services as well as to voice.<sup>122</sup> The authority to resolve issues not addressed in the Advanced Services Order is expressly reserved for state commissions.

The Commission is aware that the FCC is currently receiving comments on the meaning of the term "necessary."<sup>123</sup> However, the FCC has acknowledged that time is

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<sup>120</sup> Arbitration Award at 32.

<sup>121</sup> *UNE Remand Order*, ¶¶ 107-115.

<sup>122</sup> *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Docket No. 8-147, First Report and Order and Further Notice of Proposed Rulemaking (Mar. 31, 1999) ("Advanced Services Order").

<sup>123</sup> *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 and 96-98 (rel. Aug. 10, 2000) ("Collocation Order on Reconsideration").

vitally important in the advanced services market.<sup>124</sup> Ameritech-IL is rapidly deploying Project Pronto and intends to allow its affiliate to use Project Pronto for line shared xDSL. Therefore, the Commission will not put on hold its decision regarding CLEC collocation of line cards, given the urgency of the issue for Illinois competitive providers and end users.

Rhythms proposes that the Commission determine that collocation of equipment is necessary so long as the equipment is "directly related to" interconnection or access to unbundled elements, and an inability to collocate such equipment would interfere with a CLEC's ability to compete effectively and efficiently. The Commission finds that this standard meets the requirements of the Act and furthers the goals of facilitating competition and the deployment of advanced services in Illinois.

The evidence in this case establishes that access to line cards is necessary for interconnection and/or access to the UNEs identified by this Commission in this Section. Line cards are the point of interconnection with the ILEC fiber-fed NGDLC network, substituting for a traditional DSLAM and splitter. Line cards are also the means by which CLECs access subloops. In the NGDLC loop network, the line cards determine what types of xDSL based services can be provided to end users. Without the ability to collocate line cards in the NGDLC chassis at the RT, xDSL providers would not be able to compete efficiently and effectively with the advanced services of the ILECs or their advanced services affiliates. CLECs would be able to achieve the same functionality by collocating a standalone DSLAM at the RT. However, as discussed above, collocation is expensive and entails considering planning and delays in provisioning as compared

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<sup>124</sup> Line Sharing Order, ¶ 5.



to the use of the line card. Furthermore, xDSL based services are distance sensitive and, in many cases, a collocated DSLAM solution would not give service equivalent in quality to a xDSL service provisioned using line cards.

The Commission therefore orders that Ameritech-IL shall allow all CLECs to collocate, on non-discriminatory terms and at just and reasonable prices, their own line cards in the NGDLC equipment in the RT. The Commission further notes that it finds unpersuasive Ameritech-IL's argument that collocation of CLEC line cards at the RT would cause Ameritech-IL to incur additional expense. Ameritech-IL's evidence on this point consists of unsupported assertions and generalities. Moreover, Ameritech-IL already has substantial experience with the collocation of multiple CLECs' equipment in central office environment. Thus, the Commission precludes Ameritech-IL's imposition of any charge related to such claimed additional expense at this time. Should Ameritech-IL experience actual increased expenses of this nature, it may in a future proceeding propose recovery of such expenses that are efficiently and prudently incurred.

### **III. LINE SPLITTING OVER UNE-P LOOPS**

Rhythms takes no position on this issue.

### **IV. OSS ACCESS**

#### **A. Rhythms' Position**

##### **1. Ameritech-IL's Legal Requirements To Support Line Sharing**

The FCC's Line Sharing Order mandates that CLECs such as Rhythms have access to the high frequency portion of the loop over which data is transmitted as a UNE, and all OSS necessary to support this UNE. The FCC defines such OSS broadly to include records, mechanized backend systems and databases (and the information

contained therein), gateways and interfaces used to support pre-ordering, ordering, provisioning, testing and maintenance and billing for xDSL services.<sup>125</sup> Ameritech-IL is legally obligated to give CLECs non-discriminatory access to all such OSS so that CLECs may determine what type of xDSL is suitable for a loop (pre-ordering), place orders for the CLEC's chosen type of xDSL service into the Ameritech-IL's systems to be processed and have the line-shared loop provisioned, tested, and repaired as quickly as possible.

Further, the Telecommunications Act of 1996 established requirements of non-discrimination and equal access, which mandate that an ILEC must provide the same electronic access to OSS functions, and full access to detailed loop provisioning information, so that the CLEC can perform pre-ordering, ordering and provisioning in "substantially the same time and manner" as the ILEC.<sup>126</sup> The ILEC must give CLECs not only what OSS functionality and data that it gives itself, but also a meaningful opportunity to compete by providing access to OSS systems, functionalities, and data required to support a service even if there is no ILEC retail analog.<sup>127</sup>

Under the unbundling requirements set forth in the FCC's UNE Remand Order, pursuant to § 251 of the Act, Ameritech-IL is obligated to provide CLECs with non-discriminatory access to UNEs and OSS. Specifically, the UNE Remand Order requires Ameritech-IL to provide access to OSS data if "such information exists anywhere within the incumbents' back office and can be accessed by any of the incumbent LEC's

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<sup>125</sup> UNE Remand Order, ¶ 425.

<sup>126</sup> BellSouth South Carolina Section 271 Order, ¶ 98.

<sup>127</sup> Ameritech Michigan Section 271 Order, ¶ 171; BellSouth South Carolina Section 271 Order, ¶ 98.

personnel.”<sup>128</sup> In addition, the FCC’s UNE Remand Order requires that CLECs be permitted the same level of access to data as ILECs enjoy themselves.<sup>129</sup> Therefore, if SBC/Ameritech employees have access both directly and through an interface, CLECs should have the same access.

The evidence submitted in this proceeding demonstrates that Ameritech-IL personnel have access to all available data in Ameritech-IL’s records, backend systems and databases, while CLECs do not.<sup>130</sup> The evidence also demonstrates that Ameritech-IL provides to itself a level of integration and flow through for pre-ordering, ordering, and provisioning not available to CLECs.<sup>131</sup> Further, Ameritech-IL has not provided any details on OSS support for line sharing provisioned over Project Pronto.<sup>132</sup>

**2. Ameritech-IL Must Give CLECs Direct and Gateway Access to All OSS Data and Functionality in its Back End Systems and Databases**

Based on the legal requirements of the FCC, Ameritech-IL must give CLECs access to all OSS functionality and data needed to support pre-ordering, ordering, provisioning, maintenance and repair, and billing line shared xDSL service.<sup>133</sup> Further, Ameritech-IL must provide access to such data and OSS functionality in the same manner (*i.e.*, at the same level of mechanized flow-through and integration) and in the same time frames as it provides to itself.<sup>134</sup>

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<sup>128</sup> *Id.* ¶ 430.

<sup>129</sup> *Id.* ¶ 429.

<sup>130</sup> Rhythms Exh. 2., Jacobson Cross (Docket No. 00-312/00-313 Hearing Tr. (Jacobson), at 687-692 [stating that although CLECs do not have access, SBC Ameritech personnel do have access to various OSS systems, including, but not limited to, TIRKS, LFACS, and LEAD/LEIS].

<sup>131</sup> Rhythms Exh. 9.0, Direct Testimony of Ayala, Attachment Adv. Servs. POR Notification, at 12, 17.

<sup>132</sup> See Rhythms Lube Cross Exh. 1 Project Pronto Accessible Letter (referencing new SOLID database and GUI interface, but providing no details).

<sup>133</sup> UNE Remand, ¶¶ 428, 430.

<sup>134</sup> First Report and Order, ¶ 505.

Rhythms is seeking access to all information useful for the provisioning of line-shared xDSL available in the back end systems, databases and records of Ameritech-IL. Rhythms is also entitled to new information as Ameritech-IL updates its databases with previously manual data, or as Ameritech-IL compiles information regarding new network configurations such as Project Pronto fiber-fed DLC. Ameritech-IL should provide information needed to support all types of xDSL service that may be supported in a line shared arrangement, not just ADSL, the chosen type of xDSL deployed by Ameritech-IL's affiliate. Ameritech-IL has not committed to provide all of the loop provisioning information to which Rhythms is entitled.

Despite the clear definition of OSS in the UNE Remand Order, Ameritech-IL witness Ms. Jacobson has repeatedly testified that Ameritech-IL's obligations consists only of providing gateways and interfaces, and not access to Ameritech-IL's backend systems, databases or records, or the data contained therein.<sup>135</sup> Further, Ms. Jacobson would limit CLEC access to data to only that provided to Ameritech-IL's retail operations.<sup>136</sup> Ms. Jacobson's statement is directly contrary to the UNE Remand Order, which specifically requires that CLECs have access to all loop provisioning information in ILEC records, backend systems and databases so that CLECs "can make their own judgments" about provisioning xDSL services to customers.<sup>137</sup>

Thus, the evidence demonstrates that rather than comply with its obligations under the UNE Remand Order, Ameritech-IL is attempting improperly to restrict CLECs

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<sup>135</sup> Hearing Tr. (Jacobson), at 849-850; Rhythms Exh. 2, (Docket No. 00-312/00-313 Hearing Tr. (Jacobson), at 688-690; 690:8-12).

<sup>136</sup> Rhythms Exh. 2 (Docket No. 00-312/00-313) Hearing Tr. (Jacobson), at 688:9-19

<sup>137</sup> UNE Remand Order, ¶ 428.

to a limited list of information that it provides to its own retail operations.<sup>138</sup> Ameritech-IL's internal operations have access to loop provisioning data in all back end systems or databases. Thus, at a minimum, Rhythms should have access to data in these systems as well. Such systems include, at a minimum, LFACS, FACS, TIRKS, LEAD/LEIS, ASON, ACIS, SWITCH, WFA/C, WFA/DO, SOAC, LMOS, MARCH, and ARES.

In order to ensure that CLECs such as Rhythms have access to all information and OSS functionality to which they are legally entitled, the Commission should order Ameritech-IL to allow CLECs to audit on an ongoing basis these backend systems and databases. Ameritech-IL must provide CLECs with all documentation necessary to audit the systems and databases, including user guides, data dictionaries, glossaries, job cards and table guides, with a description of each data field, all valid entries and an explanation of the data in that field. The Commission has already approved such an audit in Docket No. 00312/090313. However, that audit was limited to Rhythms and Covad Communications, Inc. All CLECs should be entitled to such an audit.

As Ameritech-IL creates new databases or updates the data in existing databases, it has a legal obligation to provide CLECs with access to the same systems and data. The UNE Remand Order states "we expect that incumbent LECs will be updating their electronic database for their own xDSL deployment and, to the extent their employees have access to the information in an electronic format, that same format should be made available to new entrants."<sup>139</sup>

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<sup>138</sup> Ameritech-IL Exh. 3.0, Jacobson, at 2; Hearing Tr. (Jacobson), at 688:9-19.

<sup>139</sup> UNE Remand Order, ¶ 429.

The un rebutted evidence in this case demonstrates that Ameritech-IL is creating new databases and interfaces for its Project Pronto network.<sup>140</sup> Ameritech-IL has indicated in publicly available Accessible Letters that new OSS are being created to support Project Pronto (*i.e.*, SOLID, and BOPGUI).<sup>141</sup> CLECs have asked for this information, but Ms. Jacobson said she did not know where new information related to Project Pronto will be kept, and Ameritech-IL has not committed to provide CLECs with access to such databases and interfaces.<sup>142</sup>

Ameritech-IL is required by the parity provisions of the Telecom Act and the UNE Remand Order to give CLECs access to OSS data and functionality in the same manner as itself. Ameritech-IL employees have direct access, as well as gateway access, to all loop provisioning information in Ameritech-IL's records, backend systems and databases.<sup>143</sup> Therefore, Ameritech-IL must provide CLECs with both direct and gateway access to loop provisioning information. Rhythms is seeking read-only, mediated direct access. Thus, Rhythms would not be able to manipulate or change any of the data. The Commission has already ordered Ameritech-IL to provide direct access to OSS as well as gateway access in its Arbitration Decision in Docket No. 00-312/00-313, released in August, 2000.

Despite the Commission's previous order, Ameritech-IL remains unwilling to provide all CLECs with direct access to its back-end systems and databases. Not only does the Commission's previous arbitration award support providing CLECs with direct

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<sup>140</sup> See generally Ameritech-IL Exhs. 6, 6.1, 6.2, Lube Direct, Rebuttal and Surrebuttal Testimonies.

<sup>141</sup> Rhythms Lube Cross Exh. 1.

<sup>142</sup> Hearing Tr. (Jacobson), at 912:6-9; 913:1-5.

<sup>143</sup> Hearing Tr. (Jacobson), at 851:13-853:4; Rhythms Exh. 2 (Docket No. 00-312/00-313 Hearing Tr. (Jacobson), at 687-690; 690:13-18.

access, but Ameritech-IL has neither refuted CLECs' need for direct access nor presented any un rebutted evidence that direct access could be harmful.

The evidence in this case refutes several SBC assertions. First, SBC was completely unable to demonstrate that providing CLECs with direct access could cause its OSS systems "to crash." However, SBC has not presented a scintilla of evidence that there are any capacity or access constraints in the databases or systems employed by Ameritech-IL. Ms. Jacobson could not identify the capacity of any of Ameritech-IL's OSS systems such as LFACS, TIRKS or SWITCH to handle simultaneous inquiries, did not know how many employees work at Ameritech-IL, did not know how many employees at Ameritech-IL currently access the system simultaneously, and had never analyzed how many CLECs might need to use the systems.<sup>144</sup> Rhythms presented un rebutted evidence that any competent and responsible database administrator would design a computer system either to slow down or to reject additional simultaneous users to avoid a system crash.<sup>145</sup> Ms. Jacobson herself admitted that Ameritech-IL likely has such failsafe mechanisms in place.<sup>146</sup>

Additionally, Ameritech-IL was unable to prove allegations of security risks if CLECs gain direct access to information in its backend systems and databases. For example, Ms. Jacobson implied in written testimony that temporary instructions to installers regarding access to the customer's home could create a security risk.<sup>147</sup> If customers need to provide information for service or installation calls, CLECs are

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<sup>144</sup> Hearing Tr. (Jacobson), at 877-885.

<sup>145</sup> Rhythms Exh. 4.0, at 24.

<sup>146</sup> Hearing Tr. (Jacobson), at 890:11-18.

<sup>147</sup> Ameritech-IL Exh. 2.1, at 11:21.

equally entitled to that information so that they can serve the customer's needs.<sup>148</sup> SBC offered absolutely no basis to conclude that such instructions might be misused by a CLEC to the detriment of a customer.<sup>149</sup> Indeed, Ms. Jacobson acknowledged that any security risk posed by access to customer data, such as the location of a phone line serving an airline or police station, applies equally to ILEC and CLEC employees.<sup>150</sup> The Commission should reject Ameritech-IL's unfounded scare tactics as a basis to deny CLECs direct access to OSS systems and data.

Ameritech-IL also asserted in its testimony that direct access by CLECs to OSS systems and data could improperly expose customer proprietary network information (known as "CPNI"). However, Ameritech-IL failed to provide any evidence to support this assertion. Information regarding the technical characteristics of the loop is not the type of personal, customer information protected by federal law.<sup>151</sup> Section 222 of the Telecommunications Act protects CPNI which is information given to the telecommunications carrier *solely* as a result of the carrier-customer relationship, and includes the type of service subscribed to, customer's use patterns of the service and call destination.<sup>152</sup> CPNI also includes information contained on a customer's bill.<sup>153</sup>

Ameritech-IL witness Ms. Jacobson admitted that she could not define CPNI, could not identify what information in Ameritech-IL's possession constitutes CPNI, and did not know in what systems such information would be housed.<sup>154</sup> Further, Ms.

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<sup>148</sup> *Id.*

<sup>149</sup> Hearing Tr. (Jacobson), at 973-977.

<sup>150</sup> Hearing Tr. (Jacobson) at 974:22-975:11.

<sup>151</sup> Rhythms Exh. 4.0, at 21-22.

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> Hearing Tr. (Jacobson) at 936-938.



Jacobson's testimony acknowledged that numerous pieces of customer information, some of which might be considered CPNI, are already provided to CLECs via gateways.<sup>155</sup> Thus, direct access to such information raises no new issues. Ms. Jacobson was also unaware that Section 222 of the Telecom Act allows any carrier to access CPNI with customer authorization.<sup>156</sup> However, Rhythms is aware of this provision and has a method in place to obtain customer authorization for *any* customer information in an ILECs' OSS, whether such information meets the definition of CPNI or not.<sup>157</sup>

In addition to direct access, Ameritech-IL has failed to provide Rhythms with sufficient access to its OSS through gateways and interfaces. Ameritech-IL's witness Ms. Jacobson asserts that the company is providing CLECs with all access they require to Ameritech-IL's OSS. However, the record evidence clearly demonstrates that GUIs needed by CLECs for pre-ordering (Verigate) and ordering (Datagate and LEX) will not be available until March 24, 2001.<sup>158</sup>

### **3. Ameritech-IL's position**

Ameritech-IL asserts that it is in compliance with the requirements of the FCC regarding provisioning of OSS. First, Ameritech-IL argues that the 45 data elements SBC agreed to provide CLECs in the POR collaboratives gives CLECs all the information they need.<sup>159</sup> Ameritech-IL has designed and deployed "gateways" (electronic data interfaces) and GUIs that provide CLECs a single entry point for pre-

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<sup>155</sup> Ameritech-IL Exh. 2.1 at 11, Exh. 2.0 at 5; Hearing Tr. (Jacobson) 929-933.

<sup>156</sup> Hearing Tr. (Jacobson) at 934-935.

<sup>157</sup> Rhythms Exh. 4.0 at 21-22.

<sup>158</sup> Rhythms Jacobson Cross Exh. 2, at 747-748; Jacobson Cross Exh. 4.0 at 41.

<sup>159</sup> Ameritech-IL Exh. 21., Jacobson Rebuttal, at 17:12.

ordering, ordering, provisioning, maintenance and repair, and billing.<sup>160</sup> The 45 data elements are currently available in the Graphical User Interface ("GUI") of Ameritech-IL's TCNET website and through an electronic data interface ("EDI").<sup>161</sup> By March, 2001, the same data elements will be accessible through a new web-based GUI (Verigate).

Ameritech-IL argues that it is not required to give CLECs direct access to its OSS (including backend systems and databases). Rather, Ameritech-IL argues that the FCC ordered only that ILEC's make available the information necessary to support OSS functions, *i.e.*, the underlying loop qualification information contained in its engineering records, plant records, and other back office systems. Ameritech-IL opposes giving CLECs direct access to its back office systems. Ameritech-IL doesn't believe the unedited information would be usable to CLECs, and Ameritech-IL asserts that access would give CLEC's the ability to access confidential non-OSS related information, including customer-specific information.

Finally, Ameritech-IL argues that its backend systems contain information that customers expect to remain private, and customers could be harmed if Ameritech-IL is required to allow other carriers to have direct access to back office systems. Section 222 of the federal Telecommunications Act prohibits a carrier from providing access to CPNI without customer authorization. Ameritech-IL claims that CLEC access to customer information, such as which loop serves an airport, could pose a security risk to end users under some circumstances.<sup>162</sup>

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<sup>160</sup> Ameritech-IL Exh. 2.0 at 5 (Jacobson).

<sup>161</sup> *Id.*, Ameritech-IL Ex. 2.1 at 9 (Jacobson).

<sup>162</sup> Ameritech-IL Ex. 2.1 at 10-12 (Jacobson).

Ameritech-IL points out that this Commission is already considering OSS issues in Docket No. 00-0592, and that OSS issues are being taken up in the federal Enhanced OSS Plan of Record for Pre-Ordering and Ordering of xDSL and Other Advanced Services proceeding. Ameritech-IL claims that preliminary results of the Illinois proceeding indicate that direct unmediated access of the kind the CLECs are requesting will not be recommended without further proceedings.<sup>163</sup>

The CLECs are asking for expedited development of the GUIs ordered in the *Covad/Rhythms Arbitration Decision* (at 43) but Ameritech-IL asserts that the software changes needed make it technically infeasible to accelerate deployment. Ameritech-IL argues that the delay in the availability of these GUIs will not have a significant impact on the competitive marketplace in Illinois, based on the CLECs' use of other electronic interfaces.<sup>164</sup> In the meantime Ameritech-IL is funding a temporary "fix" until scheduled implementation.<sup>165</sup>

#### **4. Staff's Position**

Staff did not address this issue in its Initial Brief.

#### **5. Commission Analysis and Conclusion**

The Commission finds that Ameritech-IL must provide nondiscriminatory access, at just and reasonable rates, to its OSS sufficient to support the line sharing UNEs whether the line-shared loop is configured over all copper or fiber-fed DLC. The FCC's Line Sharing Order requires ILECs to provide access to the portion of the loop over which data is transmitted as a UNE, and all OSS necessary to support this UNE. The

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<sup>163</sup> Hearing Examiner's Proposed Order ("HEPO") released November 9, 2000.

<sup>164</sup> Ameritech-IL Exh. 2.1, Jacobson Rebuttal, at 26:14.

<sup>165</sup> Ameritech-IL Exh. 2.1, Jacobson Rebuttal, at 31:20.

FCC defines such OSS broadly to include records, mechanized backend systems and databases (and the information contained therein), gateways and interfaces used to support pre-ordering, ordering, provisioning, testing and maintenance and billing for xDSL services.<sup>166</sup> Ameritech-IL must provide access to OSS functionality and data useful for CLECs to determine what type of DSL is suitable for a loop (pre-ordering), place orders for the CLEC's chosen type of xDSL service into the Ameritech-IL systems to be processed, and have the line-shared loop provisioned, tested, and repaired as quickly as possible.

The non-discrimination requirement in the Telecommunications Act of 1996 carries two obligations for ILECs.<sup>167</sup> First, an ILEC must provide OSS functions to a CLEC that are analogous to functions it provides itself. The CLEC's access must be "equal...in terms of quality, accuracy and timeliness" in order to be sufficient.<sup>168</sup> This translates to provision of the same electronic access to OSS functions and full access to detailed loop provisioning information as an ILEC has itself so that the CLEC can perform pre-ordering, ordering and provisioning in "substantially the same time and manner" as the ILEC.<sup>169</sup> Second, the ILEC must give CLECs a meaningful opportunity to compete by providing access to OSS systems and functionalities required to support a service even if there is no ILEC retail analog.<sup>170</sup> Based on the evidence submitted in this proceeding the Commission finds that Ameritech-IL's current proposal does not

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<sup>166</sup> UNE Remand Order, ¶ 425.

<sup>167</sup> Ameritech Michigan Section 271 Order, ¶¶ 230, 139, 141; BellSouth South Carolina Section 271 Order, ¶ 98.

<sup>168</sup> Ameritech Michigan Section 271 Order, ¶ 139. See also *Id.* ¶¶ 134-140. ("It is the access to all of the processes, including those existing legacy systems used by the incumbent LEC to provide access to OSS functions to competing carriers, that is fundamental to the requirement of nondiscriminatory access.") BellSouth South Carolina Section 271 Order, ¶ 98.

<sup>169</sup> BellSouth South Carolina Section 271 Order, ¶ 98.

comply with its non-discrimination and parity obligations under the Telecommunications Act of 1996.

Access to OSS is critical to a CLEC's ability to compete fairly with the ILECs.<sup>171</sup> The UNE Remand Order requires the incumbent LEC to provide "the same detailed information about the loop that is available to the incumbent, so that the requesting carrier can make an independent judgment about whether the loop is capable of supporting the advanced services equipment the requesting carrier intends to install."<sup>172</sup> Not only must the CLEC be given access to the same qualifying loop information the ILEC has, but if any information exists "anywhere within the incumbents' back office and can be accessed by any of the incumbent LEC's personnel" it must be available to the CLEC.<sup>173</sup> The CLEC must have the same level of access to data as ILECs enjoy themselves and in the same format. Therefore, because the evidence in this proceeding demonstrates that ILEC employees have direct and gateway access, CLECs must have both types of access also.<sup>174</sup> Further, ILEC employees have access to OSS functionality that allows them to analyze loop provisioning data such as availability of spare loops for a particular customer. Therefore, CLECs must have access to such functionality as well.

The evidence submitted in this proceeding demonstrates that Ameritech-IL and personnel have access to all available data in Ameritech-IL's records, backend systems and databases, but Ameritech-IL has not made that information available to requesting

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<sup>170</sup> Ameritech Michigan Section 271 Order, ¶ 171; BellSouth South Carolina Section 271 Order, ¶ 98.

<sup>171</sup> Line Sharing Order, ¶ 172.

<sup>172</sup> UNE Remand Order, ¶ 427.

<sup>173</sup> *Id.* ¶ 430.

CLECs.<sup>175</sup> Ameritech-IL wishes to limit CLEC access to the data available to its internal retail operations, but that limitation does not comply with the FCC's orders and the clear need of CLECs for adequate data to support their services. The evidence also demonstrates that Ameritech-IL provides to itself a level of integration and flow through for pre-ordering, ordering, and provisioning not available to CLECs.<sup>176</sup> Further, Ameritech-IL has failed to provide to the Commission detailed information on the OSS support it will provide for line sharing provisioned over the new fiber-fed DLC configuration.<sup>177</sup>

The Commission finds that Ameritech-IL may not limit the information and OSS support it provides to CLECs to less than what the FCC and the Telecommunications Act of 1996 require. In addition, Ameritech-IL may not attempt to restrict loop qualification and other data on the grounds that Ameritech-IL is capable of making provisioning decisions on behalf of the CLECs. The FCC has made it clear that CLECs must be given information adequate to enable them to make independent judgments about whether to accept or reject a loop as well as other decisions relating to the provisioning of their own competitive services. Ameritech-IL may not rely on the POR as setting in stone its OSS obligations, because SBC did not disclose information about OSS changes necessary to support line sharing in the development of the POR. The parties are not in agreement that the POR is adequate. The Commission has received

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<sup>174</sup> *Id.* ¶ 429.

<sup>175</sup> Rhythms Exh. 2., Jacobson Cross (Docket No. 00-312/00-313 Hearing Tr. (Jacobson), at 687-692 [stating that although CLECs do not have access, SBC Ameritech personnel do have access to various OSS systems, including, but not limited to, TIRKS, LFACS, and LEAD/LEIS].

<sup>176</sup> Rhythms Exh. 9.0, Direct Testimony of Ayala, Attachment Adv. Servs. POR Notification, at 12, 17.

<sup>177</sup> See Rhythms Lube Cross Exh. 1 Project Pronto Accessible Letter (referencing new SOLID database and GUI interface, but providing no details).

enough evidence to make its own finding on OSS support for line sharing without relying solely on the POR. We note that the POR was not established to examine OSS needed for line sharing. The Commission is expressly authorized in the Merger Conditions Order and recent direction from the FCC to conduct its own examination of the OSS functionality and data needed to support line sharing.<sup>178</sup> Ameritech-IL presented no convincing evidence that allowing CLECs the direct, read only access to information they are seeking would create network failures or security breaches. The Commission ordered such direct access in Docket No. 00312/00313 and Ameritech-IL has reported no problems.

The Commission finds that Ameritech-IL must provide CLECs with access to the following OSS functions and data, in addition to its commitments under the POR:

a. read only, mediated, direct access and gateways to all of the loop provisioning data available in Ameritech-IL's back end systems, databases and records without restriction; at a minimum this shall include, but not be limited to, data in the LFACS, FACS, TIRKS, ARES, TMM, SWITCH, SWITCH DLE, SDAC, ACIS, WFA/C, WFA/DO, WFA/DI, LMOS and LEAD/LEIS systems and/or databases;

b. a CLEC audit of all OSS databases and backend systems listed above, in order to determine all OSS functionality and data useful in provisioning line shared xDSL. Such audit shall include, at a minimum, the following systems: LFACS, FACS, TIRKS, ARES, TMM, SWITCH, SWITCH DLE, SDAC, ACIS, WFA/C, WFA/DO, WFA/DI, LMOS and LEAD/LEIS systems and/or databases and shall include, in advance, all documentation needed to audit the systems and databases, including but

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<sup>178</sup> Rhythms Exh. 4.1, Ayala Rebuttal, Attachment A.

not limited to user guides, data dictionaries, glossaries, job cards and table guides, with a description of each data field, all valid entries and an explanation of the data in that field;

c. access to enhancements and data for the Project Pronto network configuration including but not limited to SOLID and BOPGUI, SWITCH DLE, TIRKS, and LFACs and any other new network configurations Ameritech-IL plans to deploy ;

d. OSS functionality and data sufficient to support all the types of xDSL service that currently may be supported in a line shared arrangement, including but not limited to at least three other types of xDSL service that may be supported on line shared loops currently—Rate Adaptive ADSL (“RADSL”), G.Lite and Multiple Virtual Lines (“MVL”);<sup>179</sup>

e. all useful information about loop plant available to Ameritech-IL; Ameritech-IL is not entitled to delay provision of this information until CLECs are able to identify in which databases the information resides.

The Commission also wants to make it clear that the read-only direct access it orders in this Decision must be provided to CLECs at no additional charge. The Commission is persuaded by Rhythms' evidence that Rhythms and other CLECs may utilize such access simply by using the same means of access (*i.e.*, a personal computer running in terminal emulation mode) as do Ameritech-IL employees. Moreover, Ameritech-IL has supplied no quantification of its claim that such access would entail additional cost to Ameritech-IL. Should Ameritech-IL experience such

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<sup>179</sup> Covad/Rhythms Exh. 2.0, Riolo, at 4:5-11.



additional costs as it enables read-only direct access in an efficient manner, it may seek recovery of such costs in a future proceeding.

**V. PROVISIONING SPLITTERS ON A SHELF-AT-A-TIME BASIS VS. LINE-AT-A-TIME BASIS**

**A. Rhythms' Position**

**1. Discrimination and Cost Issues.**

Ameritech-IL should be required to provision splitters on either a shelf-at-a-time or line-at-a-time basis, at the option of the CLEC. FCC regulations require ILECs to provide “any technically feasible method of obtaining interconnection or access to unbundled network elements at a particular point upon a request by a telecommunications carrier.”<sup>180</sup> The FCC’s “best practices” rules for UNEs provide that a previously successful method of obtaining interconnection or access to unbundled network elements is “substantial evidence that such method is technically feasible.”<sup>181</sup> Indeed, an ILEC may not deny a request to any method of accessing UNEs unless the ILEC proves to the state commission, by *clear and convincing* evidence, that the requested method is not technically feasible.<sup>182</sup> Importantly, a determination of technical feasibility “does not include consideration of economic, accounting, billing, space, or site concerns,” nor the fact that an incumbent LEC must modify its facilities or equipment to respond to such a request.<sup>183</sup> Ameritech-IL has failed to present clear and convincing evidence that providing splitter functionality in shelf increments, as well as line increments, is not technically feasible.

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<sup>180</sup> 47 C.F.R. § 51.321(a).

<sup>181</sup> *Id.*

<sup>182</sup> *Id.* §§ 51.5, 51.321(d).

<sup>183</sup> *Id.*

Shelf functionality is beneficial to CLECs because it permits CLECs to manage their own capacity to meet demand, increasing customer satisfaction. Provisioning splitter on a shelf-at-a-time basis also reduces the risk of ILEC provisioning errors, and decreases the time required to provision a line-shared circuit by permitting pre-wiring.

**B. Ameritech-IL's Position**

Ameritech-IL's position is that it has no obligation to deploy splitters at all, and that the Commission has no authority to direct Ameritech-IL's configuration of its central office splitter equipment. Ameritech-IL believes that the FCC's Line Sharing Order makes it clear that an ILEC has the option of providing splitter functionality or permitting CLECs to purchase their own splitters to collocate at ILEC facilities. Although Ameritech-IL is providing splitters voluntarily, it believes that shelf-at-a-time provisioning should not be required because of the limitations of Ameritech-IL's inventory system, the possibility of frame exhaust, and inefficient use of capital for both Ameritech-IL and CLECs.<sup>184</sup>

**C. Staff's Position**

Staff advocates shelf-at-a-time provisioning of splitters in accord with the Commission's arbitration award in Docket Nos. 00-0312/0313 and as a matter of sound policy.<sup>185</sup>

**D. Commission Analysis and Conclusion**

The Commission agrees with Staff and Rhythms that Ameritech-IL should make splitters available on both line-at-a-time and shelf-at-a-time bases. The FCC's Line Sharing order gives Ameritech-IL a right to retain control over splitters used for line

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<sup>184</sup> Ameritech-IL's Initial Brief, pages 76-78.

sharing, but Ameritech-IL has agreed to provide splitters and this Commission has the authority to prescribe the conditions under which it is provided, both as a tariff issue and an interconnection issue.

The Commission finds Ameritech-IL's testimony regarding the inability of its OSS system to inventory splitters on a shelf-at-a-time basis is unpersuasive. The Commission finds that it is technically feasible for Ameritech-IL to provision splitters on a shelf-at-a-time basis and that such provisioning offers pro-competitive benefits to CLECs.

## **VI. AMERITECH-IL'S SPLITTER OFFERINGS**

### **A. Location of the Splitter**

#### **1. Rhythms' Position**

Rhythms' position is that splitter location is critically important to CLECs, because it affects the cost of line sharing and may determine whether a CLEC can serve a particular customer. Ameritech-IL's proposed ILEC-owned splitter configuration would limit the availability of xDSL services to CLEC customers in violation of the nondiscrimination provisions of the Telecommunications Act of 1996.<sup>186</sup> Ameritech-IL's proposed configuration would increase the length of cable that carries the xDSL signal from the customer premises to a CLEC's DSLAM, due to the use of an intermediate distribution frame ("IDF"). Furthermore, use of the IDF causes unnecessary cabling creating a "Z-effect."<sup>187</sup> This effect would reduce the availability of CLEC xDSL services

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<sup>185</sup> Staff's Initial Brief, pages 14-15.

<sup>186</sup> 47 U.S.C. § 251 (c)(3).

<sup>187</sup> Rhythms Exh. 7.0, Riolo.

because xDSL is a distance sensitive technology.<sup>188</sup> If the Z effect within a multi-storied building added 500 to 1,000 feet to the overall length of cable, it could effectively prevent Rhythms from providing service to some customers served from that particular central office. AADS, however, would not experience the same distance limitation because of its use of a virtually collocated DSLAM with an integrated splitter close to the MDF.<sup>189</sup> This is discriminatory behavior prohibited by the Telecommunications Act of 1996. The Commission should prevent Ameritech-IL from conferring any economic or competitive advantage on its affiliate by virtue of Ameritech-IL's unilateral control over the placement of splitters in its central offices.

The Commission should adopt the FCC presumption that the efficient arrangement of cross-connections is to place the splitter on the incumbent's MDF.<sup>190</sup> This configuration requires only a single tie cable to connect the data portion of the loop to the collocater's space. Mr. Riolo has established that locating the splitter on Ameritech-IL's MDF is both technically feasible and practical.<sup>191</sup> This arrangement involves fewer cross-connections, which minimizes potential points of failure, leading to more reliable service.<sup>192</sup>

Rhythms also proposes that installing the splitter on the MDF is the least cost, most efficient arrangement. The Ameritech-IL plan to have ILEC-owned splitters in a common area of the CO would increase the number of tie cables and jumper placements/removals needed, and would result in costs that exceeding those found by

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<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> *Line Sharing Order*, ¶ 78.

<sup>191</sup> Rhythms Exh. 8.0, Riolo Direct, at 39:19-40:7.

<sup>192</sup> *Id.*

the FCC to be presumptively reasonable in its Line Sharing Order. The FCC contemplated that ILECs would place the splitter on the MDF, and, in any case, the FCC expects state commission "to examine carefully any assessment of costs for cross connections for xDSL services that are in excess of the costs of connecting loops...where the splitter is located within the...MDF."<sup>193</sup> The Commission should hold Ameritech-IL to the efficiency standard that the FCC has established, and that Mr. Riolo has confirmed.<sup>194</sup>

Rhythms argues that the Commission should not permit Ameritech-IL to charge for additional tie cables when only two tie cables (including the cable otherwise needed for voice-only services) are required. CLECs should not be required to pay for the cross-connect already in place and needed for voice-only services, whether line-shared xDSL service is being provisioned or not. Connection and disconnection costs should not be bundled; disconnection costs should be paid if and when a disconnection is requested.<sup>195</sup>

Rhythms believes that Ameritech-IL's time and materials estimates for placing and removing jumpers are unreasonably high, and proposes that, if the Commission makes any use of the Ameritech-IL study at all, it should apply the alternative task times that Mr. Riolo has provided.<sup>196</sup> Ameritech-IL has not substantiated a need for two sections of unshielded 100 pair cable, each 200 feet long. A 200 foot cable length is excessive for the average collocation arrangement, and two such lengths of cable are

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<sup>193</sup> *Line Sharing Order*, ¶ 145.

<sup>194</sup> Rhythms Exh. 8.0, Riolo Direct, at 39:17-40:8.

<sup>195</sup> *Id.*

<sup>196</sup> Rhythms Exh. 8.0, Riolo, at 44-45.

excessive even if the splitter is located away from the MDF.<sup>197</sup> In addition, Ameritech-IL's proposed configuration calls for four terminal blocks when only one is actually needed, assuming use of a splitter mounting with Amphenol cable connectors that allow preconnectorized tie cables to be plugged directly into the splitter shelf.<sup>198</sup>

Rhythms' position is consistent with the positions of other CLECs.

## **2. Ameritech-IL's Position**

Ameritech-IL believes that the Commission has no authority to determine where the splitter should be located at the ILEC's premises, citing to Section 251(c)(6) of the Act and to the recent GTE case decided by the D.C. Circuit.<sup>199</sup> Ameritech-IL proposes that when the CLEC owns the splitter, and physically collocates, the CLEC may install its splitters in the CLEC's collocation arrangement area consistent with Ameritech-IL's physical collocation tariff. When the CLEC is virtually collocated, Ameritech-IL will install, provision and maintain the CLEC's splitters under the terms of its virtual collocation tariff. And where Ameritech-IL owns the splitter, Ameritech-IL will determine where it will locate such splitters within the central office.<sup>200</sup> Ameritech-IL argues that nothing in the Telecommunications Act of 1996, the FCC's *Line Sharing Order* or any other FCC order authorizes the Commission to mandate locating the splitter at the MDF. Ameritech-IL argues that it must be permitted to control where it places the splitter to ensure its central office floor and frame space are used efficiently and safely.<sup>201</sup>

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<sup>197</sup> Rhythms Exh. 8.0, Riolo Direct, at 41:20-23.

<sup>198</sup> Rhythms Exh. 8.0, Riolo Direct, at 41:16-20.

<sup>199</sup> *GTE Services Corporation, et al. v. Federal Communications Commission, et al.*, 205 F.3d 416 (D.C. Cir. 2000).

<sup>200</sup> Ameritech-IL Ex. 1.0 (Schlackman) at 28-29.

<sup>201</sup> Ameritech-IL Ex. 1.0 (Schlackman) at 16-17.

Ameritech-IL opposes the CLECs' position that, regardless of splitter location, costs and prices should be based on the assumption that the splitter is located on the MDF because that is the most efficient service configuration.<sup>202</sup> Ameritech-IL believes MDF placement is not the most efficient engineering approach, taking into account all the services Ameritech-IL provides. In addition, Ameritech-IL asserts that placing ILEC-owned splitters in common areas provides CLECs with better access than would be available if splitters are placed on or adjacent to the MDF.<sup>203</sup> Furthermore, Ameritech-IL argues that basing prices on an assumption that the splitter is located on the MDF is inappropriate because it would base prices on a hypothetical network.<sup>204</sup> Finally, the Commission should decide this issue consistently with its decision in the Rhythms/Ameritech arbitration case, Docket Nos. 00-0312/00-0313.

### **3. Staff's Position**

Staff opposes requiring the location of splitters on the MDF, stating that it is not the most efficient configuration. Staff believes locating splitters on the MDF is most efficient only for CLECs and not for the network generally. Staff recommends that the Commission's order in this regard be consistent with the arbitration award in Docket Nos. 00-312/313.<sup>205</sup>

### **4. Commission Analysis and Conclusion**

The Commission concludes that, despite its previous ruling in Docket Nos. 00-0312/0313, it should now adopt the FCC's presumption that the preferred location for a splitter for line sharing purposes is on the MDF. Evidence in this proceeding

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<sup>202</sup> Rhythms Ex.1.0 (Murray) at 29 and Ex. 8.0 (Riolo) at 40-41.

<sup>203</sup> Ameritech-IL Ex. 1.1 (Schlackman) at 28.

<sup>204</sup> *IUB III*, 219 F.3d at 751.

demonstrates that locating ILEC-owned splitters in a common area at a distance from the MDF is discriminatory. Not only would this proposal significantly increase the costs of line sharing for CLECs, it would operate as an economic and strategic competitive advantage to Ameritech-IL's advanced services affiliate. In some circumstances this arrangement could result in making competitive advanced services unavailable to particular end-users, leaving those end-users with no alternative but to purchase advanced services from AADS. This is exactly the monopolistic result that must be avoided in the advanced services market.

The Commission agrees with Rhythms on the cost issues raised in its argument. CLECs should not be required to pay for more tie cables or terminals than are necessary and may not be required to pay for disconnection or reconnection of a pre-existing cross-connect that is needed for voice services. The Commission also finds that Ameritech-IL's time and materials estimates are inflated and based on a flawed costing methodology. The Commission finds that the cost analysis and recommended rates sponsored by Rhythms are sound and reasonable, and are hereby accepted.

## **B. Required Splitter Configurations**

### **1. Rhythms' Position**

Ameritech-IL's proposed tariff does not provide the variety of splitter options required by the FCC. The FCC identified three possible configurations for connection of a central office splitter used to provide line sharing over home run copper loops: (a) via a tie cable to the CLEC collocation arrangement, where it connects with splitter/DSLAM

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(Continued)  
<sup>205</sup> Staff's Initial Brief, pages 15-16.



equipment that the CLEC owns;<sup>206</sup> (b) via a tie cable to a common splitter location available to all CLECs;<sup>207</sup> or (c) via a splitter at the distribution frame (or another incumbent controlled area in the central office near the MDF).<sup>208</sup>

Ameritech-IL improperly refuses to provide ILEC-owned splitters in all three configurations at all serving wire centers even though the FCC's line sharing regulations expressly require ILECs to provide splitter functionality to CLECs.<sup>209</sup> The Telecommunications Act of 1996 and the FCC's rules require ILECs to provide not only UNEs, but also access to UNEs—ILECs must "provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point."<sup>210</sup> If Ameritech-IL fails to provide a splitter or splitter functionality, its offer to provide the line sharing UNE is incomplete.

Rhythms' position is consistent with the positions of other CLECs.

## **2. Ameritech-IL's Position**

Ameritech-IL believes that the ICC has no authority to determine where the splitter should be located at the ILEC's premises, citing to Section 251(c)(6) of the Act. Ameritech-IL proposes that when the CLEC owns the splitter, and physically collocates, the CLEC may install its splitters in the CLEC's collocation arrangement area consistent with Ameritech-IL's physical collocation tariff. When the CLEC is virtually collocated, Ameritech-IL will install, provision and maintain the CLEC's splitters under the terms of

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<sup>206</sup> Rhythms Exh. 8.4.

<sup>207</sup> Rhythms Exh. 8.5.

<sup>208</sup> Rhythms Exh. 8.6; *Id.* at 36:22-37:7; Rhythms Exh. 8.4-8.6, Riolo Direct Attachments.

<sup>209</sup> 47 C.F.R. § 51.319(h)(4).

<sup>210</sup> 47 U.S.C. § 251(c)(3).

its virtual collocation tariff. And where Ameritech-IL owns the splitter, Ameritech-IL will determine where it will locate such splitters within the central office.<sup>211</sup>

Ameritech-IL also argues that this issue should be decided in accord with the arbitration award in Docket Nos. 00-0312/0313.

### **3. Staff's Position**

Staff recommends that the Commission's order in this regard be consistent with the arbitration award in Docket Nos. 00-312/313.<sup>212</sup>

### **4. Commission Analysis and Conclusions**

The Commission concludes that, despite Ameritech-IL's argument to the contrary, it has the authority to order appropriate terms and conditions for line sharing.<sup>213</sup> The Commission also concludes that, despite its previous ruling in Docket Nos. 00-0312/0313, the evidence in this proceeding demonstrates that it is appropriate to require Ameritech-IL to provide a menu of three splitter configurations to CLECs. The splitter, or splitter functionality, is the means of access to the HFPL UNE and, as such, must be provided wherever requested on a nondiscriminatory basis. The Commission will require Ameritech-IL to provide the three configurations for connection of a central office splitter used to provide line sharing identified by the FCC: (a) via a tie cable to the CLEC collocation arrangement, where it connects with splitter/DSLAM equipment that the CLEC owns;<sup>214</sup> (b) via a tie cable to a common splitter location available to all

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<sup>211</sup> Ameritech-IL Ex. 1.0 (Schlackman) at 28-29.

<sup>212</sup> Staff's Initial Brief, page 16.

<sup>213</sup> Ameritech cites to Section 251(c)(6) of the Act as a prohibition of such action but the section does not provide the authority Ameritech seems to believe it provides.

<sup>214</sup> Rhythms Exh. 8.4.

CLECs;<sup>215</sup> or (c) via a splitter at the distribution frame (or another incumbent controlled area in the central office near the MDF).<sup>216</sup>

## **VII. LINE SHARING PROVISIONING INTERVALS**

### **1. Rhythms' Position**

Rhythms proposes that line sharing arrangements be provisioned consistently with the Commission's order in the Rhythms/Covad arbitration case. The order requires a phased-in approach with decreasing intervals as Ameritech-IL gains experience with provisioning line sharing. As discussed above, SBC is provisioning 4,000 DSL orders a day (most are undoubtedly line-shared loops), therefore it should be fully able to provision loops on the schedule ordered in Docket 00-312/00-313. That schedule is as follows: from June 6 to September 6, 2000, three business days for loops not requiring conditioning and five business days for loops that require conditioning; from September 6 to December 7, 2000, two business days for loops not requiring conditioning and four business days for loops requiring conditioning; and after December 7, 2000, twenty-four hours for loops not requiring conditioning and three days for loops requiring conditioning.<sup>217</sup> These intervals also include cooperative testing and any necessary line and station transfer.

Rhythms' proposed intervals reflect the fact that line sharing occurs on loops that already carry existing POTS service, and the ILEC has only to wire the splitter into the existing POTS loop.<sup>218</sup> Ameritech-IL's provisioning of the line sharing UNE will not require any additional work at the central office beyond these short jumper jobs,

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<sup>215</sup> Rhythms Exh. 8.5.

<sup>216</sup> Rhythms Exh. 8.6; *Id.* at 36:22-37:7; Rhythms Exh. 8.4-8.6, Riolo Direct Attachments.

<sup>217</sup> Rhythms Exh. 8.0, Riolo, at 46:8-18.

because line sharing reuses the existing customer's telephone number and cable pair.<sup>219</sup> In addition, because the ILEC is already providing POTS service over the same loop, there is no question that the loop is available and operational. Ameritech-IL's own witnesses acknowledged the ILEC is already provisioning loops faster than expected.<sup>220</sup>

Further, Rhythms' proposal is reasonable given Ameritech-IL's current five day intervals for standalone xDSL UNE loops. The line-shared provisioning interval should be significantly shorter than the intervals for xDSL loops. During her cross-examination, Ms. Schlackman confirmed that Ameritech-IL is provisioning line-shared loops in three days for up to 20 loop orders at one location if no conditioning is required.<sup>221</sup> Ameritech-IL has provided no evidence for its other, longer provisioning intervals, except to argue that if conditioning is required, the provisioning requirements can increase the amount of work needed.<sup>222</sup> The CLECs' intervals, however, already account for conditioning requirements.

The Texas Commission has recognized the reduced amount of work required to provision line sharing and has ordered SWBT to provide line sharing over non-conditioned loops within three business days.<sup>223</sup> The Pennsylvania Commission has also ordered line sharing intervals for Bell Atlantic beginning at three business days, and eventually decreasing to one business day.

Rhythms' position is consistent with the positions of other CLECs.

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<sup>218</sup> *Id.* at 45:14-17.

<sup>219</sup> *Id.* at 45: 18-20.

<sup>220</sup> Witness Schlackman indicated Ameritech-IL can provision loops in three days rather than the five days proposed by Ameritech-IL in its tariff. Hearing Tr. 434:10-17 (Schlackman); Ameritech-IL Opening Brief, pages 87-90.

<sup>221</sup> Hearing Tr., Schlackman at 434:10-17.

<sup>222</sup> *Id.* at 39:5-12.

## **2. Ameritech-IL's Position**

Ameritech-IL believes the Commission should reject the provisioning intervals ordered in the arbitration award in Docket Nos. 00-0312/0313 as inappropriate for a tariff of general application. Ameritech-IL claims these intervals establish preferential treatment for line sharing which could slow the provisioning of other services. Ameritech-IL proposes that the minimum provisioning interval for line shared loops be five business days even for loops not requiring conditioning. If conditioning is requested, Ameritech-IL proposes doubling the interval to ten business days.<sup>224</sup> For orders of more than 20 loops per order or per end user location, where no conditioning is requested, the provisioning and installation interval is fifteen business days, or as otherwise agreed by the parties.<sup>225</sup> For orders of more than twenty loops per order or per end user location, where loop conditioning is requested, the provisioning and installation interval should be negotiated by the parties.<sup>226</sup>

Ameritech-IL has stated it will match the provisioning interval it provides for xDSL loops used by its advanced services affiliate.<sup>227</sup>

## **3. Staff's Position**

The Staff took no position on this issue in its Initial Brief.

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<sup>223</sup> Line Sharing Interim Award, Docket Nos. 22168 & 22469, Public Utility Commission of Texas, at 24.

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

<sup>227</sup> Line Sharing Order, ¶ 174.

#### **4. Commission Analysis and Discussion**

The Commission approves the CLECs' proposed provisioning intervals, and orders provisioning intervals that are consistent with its order in the Rhythms/Covad arbitration award.

### **VIII. DIRECT ACCESS FOR TESTING AT ANY TECHNICALLY FEASIBLE POINT**

#### **1. Rhythms' Position**

Ameritech-IL should provide CLECs with test access to the line-shared loop at any technically feasible point, including without limitation, at the MDF and IDF. The Line Sharing Order requires ILECs to provide CLECs with *nondiscriminatory* test access to the loop facility for testing, maintenance, and repair activities.<sup>228</sup> The type of test access sought by CLECs is identical to the type of access ILECs currently provide for their own employees.

Rhythms seeks direct physical access to the loop at the cross-connect points. This test access is required so that CLECs can isolate the particular point on the loop that may need repair. With this type of test access, CLECs could ensure that (1) the technician is working on the proper line by performing an automatic number identification ("ANI") test; and (2) the ILEC technician has properly installed the cross connects required to provision the xDSL circuit.<sup>229</sup> In addition, CLECs occasionally need the ability to "open" a line to isolate the particular point of trouble.<sup>230</sup>

Although Ameritech-IL contends that its test access proposal is sufficient, the proposal will not allow CLECs to test the high-frequency portion of the loop from the

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<sup>228</sup> Line Sharing Order, ¶ 118.

<sup>229</sup> Rhythms Exh. 7.0, Riolo, at 25.

<sup>230</sup> *Id.*

splitter data port back to the distribution frame, through the cross-connect, and back to the DSLAM.<sup>231</sup> This limitation prevents CLECs from isolating the exact point of failure in the circuit. Although Ameritech-IL has proposed to provide splitters with "test pins," Ameritech-IL has not shown that the test pins will provide the testing functionality for the entire loop that CLECs require.<sup>232</sup> Moreover, the splitter "test pins" proposed by Ameritech-IL may create interference with the xDSL signal traveling through the splitter.

The Pennsylvania Commission ordered Bell Atlantic to provide CLECs with direct test access, including test access at the MDF.<sup>233</sup> Ameritech-IL should allow CLECs in Illinois the same test access.

Rhythms' position is consistent with that of other CLECs.

## **2. Ameritech-IL's Position**

Ameritech-IL believes it should not be required to permit access to its MDF for testing purposes. Ameritech-IL believes that the testing options it offers, including access to its mechanized loop testing ("MLT") vehicle, are adequate for the testing needs of the CLECs, and that provision of the MLT even goes beyond what is required by the FCC's line sharing rules.<sup>234</sup>

## **3. Staff's Position**

Staff did not address this issue in its Initial Brief.

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<sup>231</sup> *Id.* at 26.

<sup>232</sup> *Id.* at 26.

<sup>233</sup> Pennsylvania Public Utility Commission, Docket Nos. A-310696F0002 and A-310698F0002 (June 28, 2000), at 9.

<sup>234</sup> Ameritech-IL's Initial Brief, pages 90-91.

#### **4. Commission Analysis and Conclusion**

The Commission agrees with Rhythms that Ameritech-IL must provide nondiscriminatory access to the loop for testing, maintenance, and repair.<sup>235</sup> CLECs must have the same test access that is available to Ameritech-IL. The FCC permits alternatives only where an ILEC can show that the method is "reasonable, nondiscriminatory, and will not disadvantage a requesting carrier's ability to perform loop or service testing, maintenance, or repair."<sup>236</sup> Ameritech-IL has not shown that MLT testing meets this standard. The Commission orders that Ameritech-IL shall provide access to the loop for testing purposes at any technically feasible point including, without limitation, the MDF and the IDF.

### **IX. OTHER NON-RATE ISSUES**

#### **A. Augment Intervals For Line Sharing**

##### **1. Rhythms' Position**

Rhythms proposes an expedited timeframe for augment cabling. Certain cabling must be done in the central office to provision line sharing. This cabling, including tie cables to connect the MDF to a CLEC's or ILEC's splitter, is done as an augment to an existing collocation arrangement. Rhythms presented evidence that the ILEC should complete the installation and provisioning of tie cable ordered by CLECs within thirty calendar days of receipt of a request from a CLEC.<sup>237</sup> This timeframe should apply regardless of whether a CLEC has its equipment collocated in a cage or elsewhere in an ILEC's serving wire center.

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<sup>235</sup> Line Sharing Order, ¶ 118,

<sup>236</sup> *Id.*

<sup>237</sup> Rhythms Exh. 8.0, Riolo Direct, at 53:1-4.



Although Ameritech-IL claims it cannot meet the thirty-day installation interval, it has presented no evidence that it is technically infeasible. Installation of tie cables is a simple task that ILECs routinely perform.<sup>238</sup> Ameritech-IL has known since November, 1999 when the FCC issued its Line Sharing Order that it was required to have all facilities in place by June 6, 2000 to support line sharing. To that end, Ameritech-IL should have been making plans to install tie cables necessary for line sharing on an expedited basis.

Based on Rhythms' experience with ILEC installations in other states, ILECs can easily accomplish installations of simple tie cables within thirty days. SWBT agreed to provide Rhythms with installation of entire collocation arrangements in thirty days, which are far more complex than tie cable and line sharing arrangements, requiring space preparation, cabling and installation of racks and other activities.<sup>239</sup> Given the relative simplicity of tie cable arrangements, the Commission should order Ameritech-IL to provide them within a thirty day interval.

Rhythms' position is consistent with the positions of other CLECs.

## **2. Ameritech-IL's Position**

Ameritech-IL opposes providing tie cabling to CLECs on a 30-day interval. This Commission found in Dockets 00-0312/00-0313 that collocation terms and conditions are beyond the scope of an HFPL UNE proceeding. Terms for collocation are set out in the Ameritech-IL collocation tariffs and in approved interconnection agreements. Further, the interval Rhythms requests is shorter than those previously ordered by the

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<sup>238</sup> *Id.* at 51:5-6.

<sup>239</sup> *Id.* at 53:8-11.

Commission.<sup>240</sup> The CLECs have provided nothing new for the Commission to consider on this issue.

### **3. Staff's Position**

Staff did not address this issue in its Initial Brief.

### **4. Commission Analysis and Discussion**

The Commission finds that Ameritech-IL should be required to fulfill tie cabling requests related to line-sharing within the 30 days proposed by Rhythms. In its brief Ameritech-IL cites to the Commission arbitration award for the proposition that line-sharing services should not receive more favorable provisioning intervals than other services. In fact, the Commission language referenced states that Rhythms should not receive provisioning intervals more favorable than the intervals provided to other CLECs. In this case, Rhythms is requesting a 30-day provisioning interval applicable to all CLECs requesting line sharing tie cabling. It has been demonstrated in other states that a 30-day interval is feasible and, therefore, the Commission will order it here with the purpose of facilitating the rapid deployment of advanced services.

## **B. Acceptance Testing For Line Sharing**

### **1. Rhythms' Position**

CLECs must have an acceptance testing process available to them in order to compete equally with Ameritech-IL for provision of xDSL services. Loops often have problems that make them unusable when turned over by Ameritech-IL.<sup>241</sup> Loop acceptance testing performed before the due date provides a CLEC the opportunity to test and verify that a loop is actually working on the due date. A large percentage of the

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<sup>240</sup> *Covad/Rhythms Arbitration Decision* at 20.

loops provisioned do not test to specifications on the due date, causing Rhythms to miss commitments to its customers.<sup>242</sup> To eliminate this problem Ameritech-IL should include a "plant test date" as part of the provisioning process. Such testing is available to Ameritech-IL's POTS, Resale, and Design service retail circuits.<sup>243</sup> Other SBC operating companies already provide pre-due-date testing to CLECs for xDSL UNE loops prior to loop turnover.<sup>244</sup> Loop acceptance testing prior to turnover is critically important, because if there is a problem with the loop, the CLEC can reject it, and Ameritech-IL then can resolve the problem prior to the due date. Thus, the CLEC has an opportunity to notify its customer in advance that there may be a delay in providing xDSL service.

Once Ameritech-IL completes provisioning a loop, it should notify the CLEC, who can then either accept the loop as is, or conduct its own testing. If the CLEC conducts its own testing and the results demonstrate that the line-shared loop is capable of being used to provide advanced services, the CLEC should accept the loop. If the CLEC test reveals a problem that interferes with the CLEC's ability to provide advanced services on the loop, the CLEC may refuse to accept the line, and may instead open a trouble ticket. However, this pre-service ticket should not be placed in the general population of maintenance and repair trouble tickets. Instead, it should receive expedited treatment as an installation problem. Until Ameritech-IL cures the problem with the loop, or until Ameritech-IL and the CLEC collectively agree that the problem lies with the CLEC's

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<sup>241</sup> Rhythms Exh. 8.0, Riolo Direct, at 49:15-16.

<sup>242</sup> Rhythms Exh. 8.0, Riolo, at 49:18-20.

<sup>243</sup> *Id.* at 49:21-50:2.

<sup>244</sup> Rhythms Exh. 8.0, Riolo Direct, at 50:1-3.

equipment or facilities, including any customer premises equipment, the installation should be deemed to be incomplete.

If the line sharing arrangement is provided through the home-run copper configuration, Ameritech-IL should test the line-shared loop for copper continuity and for pair balance prior to completing the installation. If the line sharing arrangement is provided through the fiber-fed DLC configuration, Ameritech-IL should test all fiber between the port on the OCD and the RT, and should test the copper portion of the loop connecting the RT to the customer premises for copper continuity and for pair balance prior to completing the installation.

Ameritech-IL should notify the CLEC that a loop will be ready for turnover at least one day in advance. The CLEC should be able to conduct acceptance testing on the loop any time during that period. If Ameritech-IL provides longer notice to its own retail or outside affiliate, then CLECs should also have longer notice.

Rhythms' position is consistent with the positions of other CLECs.

## **2. Ameritech-IL's Position**

Ameritech-IL opposes establishing an acceptance testing procedure and instead proposes the use of Line Sharing Turn-Up Testing. Under this procedure, Ameritech-IL will complete a series of steps to ensure the service order is provisioned properly and the shared loop is free of load coils. The technician first verifies there are no load coils on the HFPL loop.<sup>245</sup> Assuming the test indicates no loads, then the technician installs all wiring and emits a tone on the CLEC's CFA pair to verify that the jumpers have been

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<sup>245</sup> Ameritech-IL Initial Brief, at 93.

correctly run.<sup>246</sup> The technician then tests and places a new protector and performs Automatic Number Identification tests.<sup>247</sup> By performing these activities/tests, Ameritech-IL asserts that central office technicians can assure that they have wired the correct telephone number to the correct line shared splitter ports and cable pair. Assuming all tests are successful, then the central office technician completes his service order by 5:00 p.m. the day prior to the due date.

Any time after 5:00 p.m. on the day prior to the due date, the CLEC can then independently test (using any remote or physical tests available, including MLT) the line shared loop and be assured that the central office work has been correctly provisioned.<sup>248</sup> Any service order not testing correctly will be referred to an Ameritech-IL Local Operations Center ("LOC"), for handling. Ameritech-IL also provides a 72 hour window for the CLEC to refer troubles on the newly installed HFPL loop and when such troubles are reported.<sup>249</sup> Ameritech-IL employees in the LOC will work with the CLEC to resolve any installation-related troubles in an expedited fashion.<sup>250</sup>

If, after the Line Sharing Turn-Up Test is completed, it is determined that the HFPL service is provisioned correctly, the CLEC must either accept the loop, request conditioning if needed, or cancel the order. All service order charges should apply. Ameritech-IL states that this procedure has been accepted by the CLEC community and

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<sup>246</sup> *Id.*  
<sup>247</sup> *Id.*  
<sup>248</sup> *Id.*  
<sup>249</sup> *Id.*  
<sup>250</sup> *Id.*

avoids their having to submit trouble reports and use the repair process and repair commitments for newly installed HFPL orders.<sup>251</sup>

In sum, Ameritech-IL argues that the Commission should not require that Ameritech-IL specify CLEC testing procedures in detail in its tariff, but rather permit it to continue to work with the CLEC industry to refine its existing process.

### **3. Staff Position**

Staff did not address this issue in its Initial Brief.

### **4. Commission Analysis and Conclusion**

Although Ameritech-IL asserts that “the CLECs” have agreed to its proposed Line Sharing Turn up-Test procedure, there is no evidence in this proceeding that Rhythms has agreed. The fact that this item is listed as a disputed issue in this case contradicts Ameritech-IL’s assertion that there is consensus on its testing plan. The Commission finds that Ameritech-IL must revise its tariff to include a pre-due date testing plan consistent with the procedure Rhythms proposes. In particular the Commission directs Ameritech-IL to implement the completion of testing and notice to the CLEC 24 hours before the due date in order to permit the CLEC to discover provisioning problems in advance of the loop turnover date. Such procedure will allow CLECs to give notice to their end users of possible delays in provisioning.

## **C. Maintenance And Repair Intervals For Line Sharing**

### **1. Rhythms’ Position**

In general, Ameritech-IL should be responsible for all testing, repair and maintenance of facilities and equipment on its side of the splitter, and the CLEC should

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<sup>251</sup> Ameritech-IL Ex. 1.1 (Schlackman) at 33-34.

be responsible for all testing, repair and maintenance of facilities and equipment on its side of the splitter. In addition, the CLEC should have physical and remote test access to the ILEC-owned splitter twenty-four hours a day, seven days a week regardless of whether the splitter is located in the serving wire center or the RT.<sup>252</sup>

Because the splitter separates data and voice traffic being carried simultaneously on a loop, any problems with the splitter can cause difficulties for both the voice provider (Ameritech-IL) and the data provider (the CLEC).<sup>253</sup> Therefore, both Ameritech-IL and CLECs should agree to coordinate in good faith any splitter testing, repair and maintenance that will significantly impact the service provided by the other party. In no event should Ameritech-IL perform any splitter testing, repair or maintenance that interrupts the flow of data to a CLEC customer without first coordinating with the CLEC to reach a mutually agreeable time for the necessary testing, repair or maintenance work to occur. Such notice should be given at least two hours in advance for any repair effort needed to restore service to an Ameritech-IL end-user that has suffered a complete loss of voice services.

For problems with the high frequency portion of the loop, Rhythms proposes a repair interval of four hours.

Rhythms' position is consistent with the positions of other CLECs.

## **2. Ameritech-IL's Position**

Ameritech-IL opposes any strict requirement to give CLECs notice and coordinate with CLECs prior to performing maintenance that disrupts the high frequency portion of the loop. Ameritech-IL also opposes an accelerated repair interval, noting

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<sup>252</sup> Rhythms Exh. 8.0, Rilolo Direct, at 52:6-9.

that the request was already rejected by the Commission in the *Covad/Rhythms Arbitration Decision*. Ameritech-IL argues that a 24 hour repair interval is appropriate for problems with the high frequency portion of the loop, as decided in Docket 00312/00313. The Commission should make a similar finding in this case as well.

### **3. Staff's Position**

Staff did not address this issue in its Initial Brief.

### **4. Commission Analysis and Conclusion**

The evidence in this proceeding demonstrates that CLECs need physical access to the splitter located at the ILEC CO or RT. Such access is necessary for CLECs to have sufficient control to fulfill service guarantees made to customers. Therefore, the Commission orders that Ameritech-IL give CLECs physical access to splitter twenty-four hours per day, seven days a week. Further, the Commission orders Ameritech-IL to give CLECs at least two hours notice prior to performing maintenance that disrupts the high frequency portion of the loop. Repairs to the high frequency portion of the loop shall be initiated within four hours and completed thereafter as soon as possible.

## **D. Liability Provisions**

### **1. Rhythms' Position**

Because line sharing uses the same loops as the existing POTS service, there are no additional operational or technical issues that would necessitate broader indemnification provisions than those currently in effect for voice-grade loops.

Rhythms' position is consistent with the positions of other CLECs.

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<sup>253</sup> *Id.* at 52:10-13.



## 2. Ameritech-IL's Position

Ameritech-IL proposes in its tariff that CLECs assume any and all liability for any intrusive testing they perform, including payment of all costs associated with any damage, service interruption, or other degradation or damage to Ameritech-IL's facilities. The CLECs also would be required to release, defend and indemnify Ameritech-IL, and hold Ameritech-IL harmless, from any claims for loss or damages, including direct, indirect or consequential damages, made against Ameritech-IL by any end user customer, telecommunications service provider or telecommunications user relating to intrusive testing by the CLEC.

Ameritech-IL believes these liability provisions are necessary because, under the HFPL UNE tariff, CLECs will be able to perform intrusive mechanized loop testing. Ameritech would require CLECs to inform the end user customer that testing will interrupt both the data and voice telephone services served by that line, and secure the end user customer's permission to perform such testing. If the Commission does not permit these liability terms, Ameritech-IL proposes that any problems requiring intrusive testing be referred to Ameritech-IL.<sup>254</sup>

Ameritech-IL argues that its liability and indemnification provisions are reasonable and consistent with the FCC's spectrum management policies set out in the FCC's *Line Sharing Order* (§§ 178-211 generally). The purpose of these provisions is to protect against significant interference with or degradation to existing voice services provided over the public switched telephone network. Additionally, requiring the data CLECs to notify and obtain the permission of the end-user before performing intrusive

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<sup>254</sup> Ameritech-IL Ex. 1.0 (Schlackman) at 30.

testing is reasonable in light of the fact that telephone voice service is the primary tool used by end-users to summon emergency assistance.

### **3. Staff's Position**

Staff did not address this issue in its Initial Brief.

### **4. Commission Analysis and Conclusion**

The Commission finds that the liability and indemnification provisions proposed by Ameritech-IL are unreasonable because they essentially impose strict liability on the line-sharing CLECs. Further, the requirement to obtain customer permission prior to testing exceeds the requirements Ameritech-IL imposes on its own operations. Thus, the requirement is discriminatory. Ameritech-IL shall submit for approval revised liability provisions reflecting the same level of liability/indemnification, if any, found in its tariffs for voice-grade UNE loops.

## **X. LOOP CONDITIONING AND QUALIFICATION**

### **A. Conditioning Charges**

#### **1. Rhythms' Position**

If Ameritech-IL's charges for loop conditioning are approved, Illinois CLECs would face a significant increase in loop conditioning rates. These rates would range from \$300 to over \$1,000 per loop.<sup>255</sup> Such rates are improper because they are inflated and do not reflect the forward-looking, cost-based costing principles adopted by the Commission and required by the FCC.

For example, Ameritech-IL's proposed charges would result in CLECs improperly paying for the replacement of obsolete network infrastructure. In order to satisfy its

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<sup>255</sup> Rhythms Exh. 1.0, Murray Direct, at 57:13-23.

obligation to provide xDSL capable loops, Ameritech-IL must condition copper loops in its embedded plant by removing now obsolete and unnecessary equipment, such as bridge taps and load coils.<sup>256</sup> These impairing devices and technologies are inconsistent with long-standing engineering guidelines and should not exist on a loop designed to current standards.<sup>257</sup> Thus, the proper charge for such conditioning is zero. CLECs should not have to pay for the removal of either excessive bridged taps or the removal of load coils on line-shared loops in order to bring Ameritech-IL's system up to date; these are not forward-looking costs.<sup>258</sup>

Further, the evidence in this proceeding shows that Ameritech-IL is including, as a cost of conditioning xDSL loops, costs that are traditionally part of ongoing plant maintenance. Such plant maintenance costs are already fully recovered through recurring rates charged to end-users and CLECs. The Commission has previously rejected Ameritech-IL's proposed approach to conditioning charges as inherently discriminatory.<sup>259</sup>

The conditioning charges proposed by Ameritech-IL are further flawed because Ameritech-IL has used underlying network assumptions for its proposed non-recurring conditioning charges that are inconsistent with the assumptions used for its recurring rates. Costs must be based on a forward-looking network, but Ameritech-IL proposed conditioning charges that were based on its embedded plant. Meanwhile Ameritech-IL's

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<sup>256</sup> *Id.* at 11:3-5.

<sup>257</sup> Rhythms Exh. 8.0, Riolo Direct, at 21:16-23.

<sup>258</sup> Rhythms Exh. 1.0, Murray Direct, at 57:13-20.

<sup>259</sup> Commission Order, Docket 99-0593, (August 15, 2000), at 95.

recurring xDSL loop prices are based on a forward-looking network design, with xDSL capable loops free of load coils, repeaters and excessive bridged taps.<sup>260</sup>

Several state commissions have rejected ILEC rate proposals because of their use of different network design assumptions for recurring and nonrecurring rates. The Massachusetts Department of Telecommunications and Energy recently rejected Verizon-Massachusetts' conditioning charges on the basis that Verizon-Massachusetts was using a copper loop network topology for these rates and a fiber-fed loop network topology for its UNE rates. The California Commission rejected Pacific Bell's attempts to use different models for its recurring and nonrecurring rates.<sup>261</sup> The Texas Commission decided that "the network design inconsistencies in the recurring and non-recurring cost studies do not result in correct xDSL costs and rates and consequently render the proposed charges invalid."<sup>262</sup> This Commission should reject Ameritech-IL's inconsistent cost studies.

Rhythms' proposed zero loop conditioning charge is consistent with the costing principles set forth in both the FCC's UNE Remand and Line Sharing Orders. When the FCC's pricing rules for nonrecurring costs are applied to the proper forward-looking network there are no conditioning charges for Ameritech-IL to recover.

## **2. Ameritech-IL's Position**

Ameritech-IL believes its loop conditioning charges are justified and adequately supported. The FCC determined in its *Local Competition Order* that incumbent local

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<sup>260</sup> See Rhythms Exh. 1.0, Murray Direct, at 74:18-75:6.

<sup>261</sup> California Public Utilities Commission, In Re: Rulemaking on Open Access to Bottleneck Services and In re: Investigation into Open Access and Network Architecture, D. 98-12-097, R. 93-04-003/I.93-04-002, (Dec. 17, 1998) at 34.

exchange carriers are entitled to recover loop conditioning costs incurred when the ILEC conditions a loop at a CLEC's request.<sup>263</sup> The FCC pointed out that "networks built today normally should not require voice-transmission enhancing devices on loops of 18,000 feet or shorter," but recognized that these devices are sometimes present and there may be costs incurred in removing them for which the ILEC should be able to charge.<sup>264</sup> Ameritech-IL argues that the CLECs' proposal of a zero charge for loop conditioning is contrary to the FCC's orders. Ameritech-IL asserts that Rhythms' proposal would require loop conditioning prices to be determined based on the most efficient network configuration assuming that the network were rebuilt from scratch today, which violates the Eighth Circuit's decision in *Iowa Utilities Board III*.

Ameritech-IL argues that its cost studies provide accurate prices for loop conditioning as described in Mr. Smallwood's testimony.<sup>265</sup> Staff has suggested that the Commission-approved shared cost factor for Ameritech-IL should not be applied to loop conditioning costs.<sup>266</sup> But Ameritech-IL asserts that the FCC's TELRIC methodology allows application of shared and common costs to loop conditioning costs.<sup>267</sup> Ameritech-IL argues that Staff has presented no valid rationale for deviating from the FCC-mandated TELRIC methodology for loop conditioning.

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(Continued)

<sup>262</sup> Public Utility Commission of Texas, Petition of Rhythms Links Inc. and Covad Communications for Arbitration to Establish an Interconnection Agreement with Southwestern Bell Telephone Company, Dockets No. 20226 et al., (Nov. 30, 1999) at 96.

<sup>263</sup> *First Report and Order*, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, ¶ 382 (rel. August 1, 1996); see also *UNE Remand Order*, ¶¶ 192-193.

<sup>264</sup> *UNE Remand Order*, at ¶ 193.

<sup>265</sup> Ameritech-IL Ex. 4.0 (Smallwood) at 13.

<sup>266</sup> Tr. at 1221.

<sup>267</sup> Tr. at 1217.

Rhythms challenges the time estimates in Ameritech-IL's cost studies and proffers its own assumptions regarding work times.<sup>268</sup> Ameritech-IL asserts that it has verified the accuracy of its loop conditioning time estimates done and determined that the actual time required to condition facilities is consistent with the time estimates in the cost study.<sup>269</sup> Similar time estimates for loop conditioning activities were approved by the Missouri Commission.<sup>270</sup>

The CLECs also attack Ameritech-IL's assumption that on average three load coils will be removed on loops less than 18,000 feet.<sup>271</sup> The CLECs argue that ILEC design rules make it extremely rare for three load coils to be placed on loops of less than 18,000 feet, thus such configuration should not be calculated as the average configuration. However, Ameritech-IL contends that some loops less than 18,000 feet do contain three load coils and, in those rare situations, CLECs should be charged for their removal.<sup>272</sup> If the Commission concludes that an assumption of an average of three load coils on loops less than 18,000 feet is inappropriate, the solution is not to require Ameritech-IL to perform conditioning on such loops for free but to require Ameritech-IL to submit a new cost study that calculates removal of load coils on a per-occurrence basis.

The CLECs propose that Ameritech-IL be required to condition all loops in a cable at the load coil location at the same time, or to develop its loop conditioning charges as if that were the case, so that the CLECs would bear only the equivalent cost

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<sup>268</sup> Rhythms Ex. 2.0 (Riolo) at 30-34.

<sup>269</sup> Ameritech-IL Ex. 4.1 (Smallwood) at 16-17.

<sup>270</sup> Missouri Case No. TO-2000-322.

<sup>271</sup> Sprint Ex. 2.0 (Dunbar), at 8.

<sup>272</sup> Ameritech-IL Ex. 1.1 (Schlackman) at 2.

of de-loading one copper loop pair out of many, thereby reducing the per-unit cost. Ameritech-IL urges the Commission to reject this proposal. As explained by Ms. Schlackman, conditioning all copper loop pairs in a binder group at the same time would cause substantial and unnecessary work on the network. In addition, Ameritech argues that "deconditioning" all pairs in a binder group at the same time could cause degradation or failure of some customers' POTS service.<sup>273</sup> Ameritech-IL also argues that it cannot remove all bridged tap across all pairs in a binder group. Ameritech-IL states that the bridged tap is actually cable sheath on a cable pair that serves other addresses beyond the xDSL end user's premises, and therefore is not a design flaw.

Even if Ameritech-IL could condition multiple lines at one time, Ameritech-IL argues that it would be inappropriate to simply divide the proposed loop conditioning rates by the number of loops to be conditioned. Ameritech-IL states that many additional engineering steps involving additional time would be required to perform loop conditioning in this manner, and none of these steps and time periods would be captured in Rhythms' proposed pricing methodology. In addition, an adjustment would have to be made for the number of conditioned xDSL loops that will never be requested, and for the opportunity cost of the waiting period prior to cost recovery on those xDSL loops. Ameritech-IL also argues that Rhythms' proposed pricing methodology would also create administrative problems that are not accounted for under Rhythms' proposed pricing methodology.<sup>274</sup>

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<sup>273</sup> Ameritech-IL Ex. 1.1 (Schlackman) at 2-3.

<sup>274</sup> Ameritech-IL Ex. 4.2 (Smallwood) at 2-3.

### **3. Staff's Position**

Staff advises the Commission to reject Ameritech-IL's tariff terms and rates for loop conditioning. Ameritech-IL's proposal could result in charges to customers for services they do not receive, (*i.e.*, the conditioning of loops between 12,000 ft and 17,500 ft in length). When CLECs order conditioning, they must pay for the removal of three load coils regardless of the number that actually need to be removed. The number of load coils will be fewer than three on loops of 18,000 feet or less—a majority of the time. Similarly, Ameritech-IL charges for removal of two bridge taps regardless of whether one or two is needed.

The Staff recommends that Ameritech-IL submit new tariffs for line conditioning that comply with the following: line conditioning rates should use the assumption that a 25 pair binder group is conditioned at each site visit and the fixed costs of travel, setup, and close down should be distributed over all 25 wire pairs; bridge tap removal rates should be recalculated without any costs for reinstallation being applied; line conditioning rates should be offered on a per occurrence basis for the removal of load coils and excessive bridge taps; and no shared and common cost factors should be applied to line conditioning rates.

### **4. Commission Analysis and Conclusion**

The Commission finds that Ameritech-IL's proposed approach to conditioning charges for competitors is inherently discriminatory. Ameritech-IL is seeking to double recover for upgrading its system by means of both recurring and non-recurring charges. In addition, Ameritech-IL has invalidated its cost evaluations by using different underlying network assumptions for recurring as opposed to non-recurring charges.



Although the FCC has found that ILECs should be permitted to recover costs incurred in loop conditioning, this Commission is not convinced that Ameritech-IL is incurring these costs for the benefit of CLECs. Furthermore, Ameritech-IL has inflated its costs with unreasonable assumptions (such as an average of three load coils on a line of less than 18,000 feet) and specifications (such as insisting on conditioning loops one at a time for purposes of costing). Accordingly, the Commission finds this issue in favor of the CLECs and will order that loop conditioning charges be set at zero.

**B. Manual Loop Qualification Charge**

**1. Rhythms' Position**

Because Ameritech-IL has failed to provide cost support or any other specific basis for either its manual or mechanized loop qualification charge, this Commission must not approve either charge. Given that xDSL services have been available for some time, most of the basic loop qualification information should have been captured in Ameritech-IL's databases some time ago.<sup>275</sup> Thus, the forward-looking cost analysis should include data at the fully mechanized processing cost, and not at a manual cost.<sup>276</sup>

In addition, the Commission should not accept Ameritech-IL's proposed "To Be Determined" price for mechanized loop qualification. To avoid future litigation, this Commission should find that the reasonable, cost-based price for mechanized loop qualification is at or near \$0.<sup>277</sup> In a fully mechanized environment, the forward-looking cost of providing loop makeup information electronically is the cost of supplying a few

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<sup>275</sup> Rhythms Exh. 1.0, Murray Direct, at 93:16-94:3; Rhythms Exh. 8.0, Riolo Direct, at 64:6-10.

<sup>276</sup> Rhythms Exh. 1.0, Murray Direct, at 94:3-5.

<sup>277</sup> *Id.* at 94:3-14.

additional data fields via Ameritech-IL's OSS.<sup>278</sup> For example, the cost of additional processor capacity required for a few additional bits of data should be the cost of the power required to process those bits. Given the current prices for power and processing, it is unlikely that the cost of additional capacity required to process loop makeup data would even be measurable on a per-order basis.<sup>279</sup> Thus, the best estimate of the efficient, long-run cost for the electronic provision of loop makeup information that CLECs can in turn use to perform their own loop qualification is \$0.<sup>280</sup>

The Texas Public Utility Commission established an interim nonrecurring "dip charge" for real time access to OSS functionalities of \$0.10 per loop.<sup>281</sup> The Kansas Corporation Commission recently ruled that, based on its loop qualification plans, SWBT's loop qualification price should be set at zero.<sup>282</sup> Given Ameritech-IL's failure to provide specific support for its manual loop charge, the Commission should similarly reject Ameritech-IL's proposed charge. Instead, the Commission should impose a mechanized loop qualification charge at zero, based on the evidence in this case.

Rhythms' position is consistent with the positions of other CLECs.

## **2. Ameritech-IL's Position**

Ameritech-IL proposes a \$1.98 per minute charge for Manual Loop Qualification, which it states was previously approved in the merger order, *In re SBC Communications, Inc.*, ICC Docket No. 98-0555, 197 (September 23, 1999). Ameritech-

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<sup>278</sup> Exh. 1.0, Murray Direct, at 92: 8-12.

<sup>279</sup> *Id.* at 92:12-15.

<sup>280</sup> *Id.* at 92:8-18.

<sup>281</sup> Texas Public Utility Commission, Arbitration Award, Docket Nos. 20226 and 20272, (Nov. 30, 1999), at 102-03.

<sup>282</sup> Kansas Corporation Commission, Arbitrator's Award, Docket No. 00-DCIT-389-ARB, (May 9, 2000), at 20. The Kansas Commission affirmed its interim pricing holding in its July 26, 2000 Order Affirming Arbitrator's Recommendation Setting Interim Rates.

IL states that the rate was derived by marking up the hourly engineering labor rate of \$88.68 by 33.6% for joint and common costs, and dividing the quantity by 60 minutes.

### **3. Staff's Position**

Staff believes the manual loop qualification charge in Ameritech-IL's brief may be excessive.<sup>283</sup>

### **4. Commission Analysis and Conclusion**

The Commission finds that Ameritech-IL has failed to provide adequate evidentiary support for its \$1.98 charge per minute for manual loop qualification. The Commission is persuaded by Rhythms' argument that loop information should have been accumulated in an Ameritech-IL databases long before now and, therefore, manual processing costs are not appropriate. The Commission cannot approve a "To Be Determined" price for mechanized processing. Approval of such a term would give Ameritech-IL carte blanche to impose whatever mechanized loop qualification charge it chooses. Since Ameritech-IL has failed in this proceeding to submit cost support for its loop qualification charges, such charges will be set at \$0.

## **XI. LINE SHARING RATES**

### **A. High Frequency Portion of the Loop Charge**

#### **1. Rhythms' Position**

The evidence in this case demonstrates that the HFPL rate should be set at \$0. The FCC directed in its Line Sharing Order that the price of line sharing UNEs "be set by states in the same manner as they set the price of other unbundled network

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<sup>283</sup> Staff's Initial Brief, page 17.

elements”<sup>284</sup> and noted that virtually all states had already adopted and implemented a TELRIC methodology.<sup>285</sup> In its Local Competition Order,<sup>286</sup> the FCC expressly prohibited ILECs from charging CLECs for costs not caused by the provision of the UNE being priced.<sup>287</sup>

Ameritech-IL argues that the HFPL should be priced at 50% of the price of an unbundled loop. Ameritech-IL’s proposed rate for the high frequency portion of the loop fails to recognize that the ILEC bears no additional incremental cost for provisioning this element, and thus the economic principles adopted by the Commission dictate that it should be priced at zero. Ameritech-IL’s own witness admitted that Ameritech-IL incurs no incremental loop cost to provide the HFPL.<sup>288</sup> SBC’s FCC filings in support of its xDSL tariffs show it has no loop cost, and thus no HFPL cost, in providing the HFPL to itself. Consequently, a non-zero price would result in double recovery for Ameritech-IL because the costs of the line shared loop are already fully recovered in monthly local service rates.<sup>289</sup>

Ameritech-IL witnesses Mr. O’Brien and Dr. Carnall assert that CLECs should subsidize Ameritech-IL’s retail basic exchange services, and that such subsidies should be derived by charging CLECs half the price of a stand-alone unbundled loop for line

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<sup>284</sup> Line Sharing Order, ¶ 135.

<sup>285</sup> Line Sharing Order, ¶ 132.

<sup>286</sup> Implementation of the Local Competition Provisions of The Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd. 15, 499, ¶1 (1996) (“Local Competition Order”).

<sup>287</sup> Local Competition Order, ¶ 691.

<sup>288</sup> Ameritech-IL witness Dr. Carnall made this admission in the Rhythms/Covad Line Sharing Arbitration Docket Nos. 00-0312 and 00-0313 (consolid.).

<sup>289</sup> *Id.* at 42:16-20; 43:19-20 (stating Ameritech-IL’s already recovers its shared loop costs in the prices it charges for the other services provided over the same line). Ameritech-IL could prevent such double recovery with an offsetting decrease in its retail rates, but it has made no such proposal.

sharing.<sup>290</sup> Ameritech-IL claims it needs a subsidy because the Commission has approved rates that are insufficient to allow recovery of Ameritech-IL's costs incurred for local exchange service.<sup>291</sup> However, Ameritech-IL failed to provide evidence to support its alleged need for a subsidy.<sup>292</sup>

A growing number of state commissions have rejected rate proposals identical to Ameritech-IL's for the HFPL. Ameritech-IL's sister companies have recently presented similar arguments in Texas, Minnesota and Kansas. Every one of these state commissions has rejected this proposal and ordered the SBC affiliate to adopt a zero recurring charge for the line-shared loop. In reaching these conclusions, the commissions found unconvincing the ILECs' arguments that the charges were justified because they would charge both SBC-affiliated and unaffiliated xDSL CLECs a non-zero charge for the line-shared loop.

Rhythms' position is consistent with the positions of other CLECs.

## **2. Ameritech-IL's Position**

Ameritech-IL argues that it should be allowed to charge 50% of the approved recurring unbundled loop price for the HFPL. Ameritech-IL argues that a \$0 monthly price for the HFPL conflicts with the requirements of Sections 252(c) and 252(d)(1) of the Telecommunications Act of 1996 that UNE prices be based on the cost of providing the element and may include a reasonable profit. In its Order approving the SBC/Ameritech merger the FCC necessarily found that any potential for "double recovery" of such costs through retail rates was irrelevant when it established a

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<sup>290</sup> Ameritech-IL Exh. 5.0, O'Brien Direct, at 4-5 plus Attachment; Ameritech-IL Exh. 4.0, Carnall Direct, at 19:26-27, 23:16-24:3.

<sup>291</sup> Rhythms Exh. 1.4, Murray Surrebuttal, at 7:7-12.

surrogate HFPL price of 50% of the cost of an entire unbundled loop for unaffiliated CLECs when actual line sharing was not available.<sup>293</sup> Therefore, whether the UNE-related costs are currently being recovered by retail voice services is irrelevant in setting the price of UNEs. Ameritech-IL argues there is no evidence in the record that Ameritech-IL is recovering the entire cost of the loop in retail rates.

Ameritech-IL points out that xDSL is just one of several advanced services available today in the marketplace.<sup>294</sup> Ameritech-IL asserts that establishing a zero price for the HFPL, according to Ameritech-IL could have a damaging effect on the other services, such as broadband wireless and cable modem services.<sup>295</sup>

Ameritech-IL argues that the zero monthly recurring HFPL price proposed by the CLECs would constitute a taking of Ameritech-IL's property without just compensation which is unconstitutional.<sup>296</sup> Ameritech-IL argues its proposed rate for the HFPL provides a significant discount to CLECs in comparison to the price they would have to pay for an entire loop. Ameritech-IL also argues that its proposed recurring HFPL price is fully consistent with the FCC's TELRIC pricing principles under which the cost of a line-shared loop is a shared cost which must be allocated between the two services that cause that cost.<sup>297</sup>

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<sup>292</sup> Rhythms Exh. 1.4, Murray Surrebuttal, at 7:19-8:2.

<sup>293</sup> *Applications of Ameritech Corp. and SBC Communications, Inc.*, 14 FCC Rcd 14712, ¶ 467; Appendix C (Conditions Appendix), ¶ 14 (rel. Oct. 8, 1999) ("*SBC/Ameritech Merger Order*") (emphasis added).

<sup>294</sup> Cable modem service, for example, is established and expanding rapidly.

<sup>295</sup> Ameritech-IL's Initial Brief, at 109.

<sup>296</sup> See *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 310 (1989); *Tenoco Oil Co. v. Department of Consumer Affairs*, 876 F.2d 1013, 1020 (1<sup>st</sup> Cir. 1989); *Mississippi River Fuel Corp. v. FPC*, 163 F.2d 433, 437 (D.C. Cir. 1947).

<sup>297</sup> Ameritech-IL Ex. 3.0 (Carnall) at 10-12.

### 3. Staff's Position

The Staff urges the Commission to attribute 0% of joint and common loop costs to the HFPL.<sup>298</sup> Ameritech-IL, having attributed, presumably forever, 100% of loop costs to the voice portion of the loop<sup>299</sup> is now proposing that 50% of joint and common loop costs be attributed to the HFPL.<sup>300</sup> Any non-zero price for the HFPL is not justified. First, Ameritech-IL does not assert or prove that it incurs any incremental joint and common costs as a result of a competitor's use of the HFPL. Second, Ameritech-IL has in the past allocated 100% of loop costs to its POTS service, and, accordingly has allocated 0% to the HFPL. Third, Ameritech-IL's assertion that it fails to recover loop costs from the voice portion of the loop is highly debatable. Finally, Ameritech-IL has failed to propose any measure in this proceeding to ensure against double recovery. In addition, Ameritech-IL has not committed to refund overpayments to end-users should it be demonstrated that it is over-recovering its costs. Although Ameritech-IL's current rates were set in 1994, Ameritech-IL is under price cap regulation at its own request.

Other state Commissions have recognized that a 0% allocation of joint and common costs to the HFPL is proper. SWBT was ordered by the Texas PUC not to charge any loop cost for line sharing because it allocated \$0 of its local loop cost to its retail ADSL offering.<sup>301</sup> Staff believes the Commission should also determine that the proper allocation of joint and common costs to the HFPL is 0%.

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<sup>298</sup> Staff Exhibit No. 1.0 at 7, 9; 10, Staff Exhibit No. 2.0 at 4-5; Ameritech Exhibit No. 4.0 at 2 - 3, 12.

<sup>299</sup> Staff Exhibit No. 1.0 at 9 –10.

<sup>300</sup> Ameritech Exhibit Nos. 4.0 at 6, 19; 5.0 at 5.

<sup>301</sup> Texas Public Utility Commission, Interim Award, Docket No. 22168 and No. 22469 (June 6, 2000).

#### **4. Commission Analysis and Conclusion**

The Commission agrees with the CLECs and its Staff that the allocation of any costs to the HFPL would be wrong and that the line sharing charge for the HFPL should be \$0. Ameritech-IL has not alleged or proved that making the HFPL available for line sharing results in any incremental costs. Nor has Ameritech-IL provided evidence that current loop rates fail to recover 100% of the costs Ameritech-IL incurs to provide local exchange voice service. Accordingly, the monthly line sharing charge for the HFPL shall be \$0.

#### **B. OSS Modification Charge**

##### **1. Rhythms' Position**

Rhythms urges the Commission to reject Ameritech-IL's proposed charge for OSS modification because SBC has admitted that it will incur the cost as a result of its merger-related commitments to the FCC. Further, Ameritech-IL has failed to demonstrate that its proposed charge meets the Line Sharing Order's test for OSS modification recovery claims. The FCC's Line Sharing Order indicates that it may be appropriate to allow ILECs to recover OSS modification costs where the ILEC provides a detailed evidentiary basis to determine the extent to which any OSS modifications benefit Ameritech-IL's own (or affiliate) operations, as opposed to being solely for provisioning CLECs with the line-shared loop.<sup>302</sup>

The evidence in this proceeding demonstrates that SBC's entire reported OSS upgrade cost is a merger implementation cost, and therefore such costs should not be recovered from CLECs. Ameritech-IL seeks to impose a monthly recurring charge of

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<sup>302</sup> Line Sharing Order, ¶ 106.



\$0.87 to recover the cost of upgrades from Telcordia for line sharing. However, Ameritech-IL has admitted through its Ohio affiliate that “all of the work effort by Telcordia would be required in order for Ameritech [Ohio] to supply services to AADS,” its own affiliate.<sup>303</sup> Because Ameritech-IL intends to provide retail ADSL in Illinois on line shared loops through AADS, Ameritech-IL would incur all of the same OSS costs to accommodate its affiliate’s retail plans even if there were no line sharing by unaffiliated CLECs such as Rhythms. Thus, there are no incremental, forward-looking OSS costs attributable to line sharing by unaffiliated competitors.

Moreover, Ameritech-IL has not provided the detailed information required to address the FCC’s requirement for OSS cost recovery. In particular, Ameritech-IL’s cost study provides no detail about what is included in its cost estimate for the Telcordia OSS upgrade package, nor does it show how Ameritech-IL developed the demand estimate across which it distributes its claimed cost.<sup>304</sup> Thus, there are no facts to support a finding that Ameritech-IL’s proposed OSS modification charge meets the standard that the FCC established in paragraph 106 of its Line Sharing Order.

Finally, Ameritech-IL cannot reasonably explain why the xDSL demand (the denominator of its calculation) assumed in its cost analysis is so dramatically lower than the volumes it claims it has captured and will capture solely through its own affiliate. SBC has already announced in an investor briefing that its own retail ADSL service had 399,000 xDSL lines in service at the end of the second quarter.<sup>305</sup> However, Ameritech-

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<sup>303</sup> Rhythms Exh. 1.4, Murray Surrebuttal, at 42:5-9.

<sup>304</sup> Rhythms Smallwood Cross Exh. 7, at 321:19-322:19.

<sup>305</sup> SBC Investor Briefing (July 20, 2000), at 1.

IL's calculation assumes that only a fraction of these xDSL lines will exist in month one of the application of the new rate element.<sup>306</sup>

The Commission should not force new entrants to bear a disproportionate share of the implementation costs of competition, including OSS costs. Competition cannot flourish if Ameritech-IL, or its affiliate, is able to underprice equally efficient CLECs due to improperly transferred costs.

Rhythms' position is consistent with the positions of other CLECs.

## **2. Ameritech-IL's Position**

Ameritech-IL's Position is that its proposed rate for OSS modification is reasonable and represents the actual costs involved in modifying its OSS system to accommodate line sharing. Ameritech-IL believes its proposed rate is based on appropriate demand projections and that the FCC's Line Sharing Order supports their being compensated for these modifications.<sup>307</sup>

## **3. Staff's Position**

The Staff urges the Commission to reject Ameritech-IL's proposed rates and charges for OSS modification. The Staff believes the line counts used by Ameritech-IL in developing its rate understate the actual number of xDSL lines to be provided by the company, inflating the per line charge. In addition, the exact nature of the upgrade is not clear and Staff notes that the cost may include charges for more than the minimum required upgrade components. If OSS charges are allowed, staff proposes that recovery occur over 5 years rather than 3 years in order to make any charge imposed

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<sup>306</sup> Ameritech-IL's Initial Brief, at 104.

<sup>307</sup> Ameritech-IL's Initial Brief, at 113-115.

less detrimental for CLECs and their end-user customers. The Staff recommends an OSS modification charge of \$0 based on the evidence in this proceeding.<sup>308</sup>

#### **4. Commission Analysis and Conclusion**

The Commission agrees with Rhythms and its Staff that Ameritech-IL has failed to present adequate support for the imposition of any charge for OSS modification. Accordingly, this charge will be set at \$0. Ameritech-IL may incur costs in relation to OSS modification, but the charges Ameritech-IL has presented here are not supported with evidence in the record. Ameritech-IL's methodology is flawed in that the estimated demand for line shared xDSL is artificially low.

#### **C. Cross Connect Configuration Charges**

##### **1. Rhythms' Position**

Ameritech-IL's proposed cross connect charges are based on an inefficient network configuration with unnecessary tie cables and jumpers. As a result, the charges proposed for tie cables and jumpers are neither cost-based nor consistent with the costing principles of the Commission and the FCC. Rhythms proposes that the cross connect charges be based on the efficient placement of the splitter at the MDF.

The record evidence demonstrates that Ameritech-IL used in-plant factors to inappropriately inflate the costs of splitters and tie cables.<sup>309</sup> Ameritech-IL used outdated in-plant factors and could provide no evidence that its factors accurately reflect the time or cost of splitter installation.<sup>310</sup> Moreover, the time estimates for cross-

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<sup>308</sup> Staff Exhibit Nos. 2.0 at 8; 2.2 at 5 – 7.

<sup>309</sup> *Id.* at 17.

<sup>310</sup> Rhythms Exh. 1.4, at 17.

connections are overstated and include unnecessary functions, both for new service installs and for disconnects.<sup>311</sup>

Rhythms argues that the proposed disconnect charge be assessed at the time of disconnection, not at installation as proposed by Ameritech-IL.<sup>312</sup> Ameritech-IL's proposed costs incorrectly assume the xDSL service will always be disconnected before the underlying voice service, and thus include costs to restore the voice service. The charge for reconnection is contrary to the evidence and inappropriate.<sup>313</sup> Ameritech-IL has also estimated the time for service disconnect to be identical to that for service installation<sup>314</sup> when, in fact, significantly less time is required to disconnect a pair than to install it.<sup>315</sup>

Recent conduct of SBC strongly suggests that Ameritech-IL's rates are too high. Ameritech-IL's proposed tariff rates are nine times higher than the prices SBC is offering in a 13-state agreement with Covad Communications, Inc. According to the initial press release by SBC and Covad, Covad will pay a \$5.75 recurring charge and a \$10.00 nonrecurring charge for line-sharing. According to the draft interconnection agreement between SBC and Covad, those prices include all of the non-recurring charges. Thus, the prices proposed in this proceeding do not accurately reflect costs. Ameritech-IL is proposing to charge CLECs \$78.40 nonrecurring cross connection charge plus a \$13.17 service order charge—a total of \$91.57 to install splitters. SBC will charge Covad only \$10 in non-recurring and service order charges for splitters. Ameritech-IL cannot claim

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<sup>311</sup> Rhythms Exh. 1.0, Murray Direct, at 115:13-117:15.

<sup>312</sup> Rhythms Exh. 8.0, Riolo Direct, at 46:4-5; Rhythms Exh. 1.0, Murray Direct, at 116:13-16.

<sup>313</sup> Rhythms Exh. 1.0, Murray Direct, at 116:18-117:11.

<sup>314</sup> Rhythms Exh. 8.0, Riolo Direct, at 46:11-20.

<sup>315</sup> *Id.* at 46:11-18.

that the inflated non-recurring charges are offset by recurring charges because the recurring charges it proposes here are nearly as high or higher than those provided to Covad. Hence, Ameritech-IL's deal with Covad is either anticompetitive because it is not cost-based, or Ameritech-IL's proposed nonrecurring price for competitors in this proceeding is 90% too high.

For these reasons, the Commission should reject the rates proposed by Ameritech-IL for cross connects and adopt those proposed by Rhythms.<sup>316</sup> Rhythms' position is consistent with the positions of other CLECs.

## **2. Ameritech-IL's Position**

Ameritech-IL's Position is that its proposed charge for cross connects is reasonable and complies with the FCC's TELRIC rules and the Illinois Commission's arbitration award in Docket Nos. 00-0312/0313.<sup>317</sup>

## **3. Staff's Position**

Staff recommends that the Commission rule consistently with the arbitration award in Docket Nos. 00-0312/0313.<sup>318</sup> The rate proposed by Ameritech-IL appears to be supported and appropriately TELRIC based.<sup>319</sup> Staff believes it would be unreasonable to require Ameritech-IL to charge for cross connects as though the splitter were located on the MDF, because Ameritech-IL will not place the splitter on the MDF, but instead in a common area away from the MDF.<sup>320</sup>

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<sup>316</sup> Rhythms Exh. 1.0, Murray Direct, 53:8-12; *Id.* at 119:6-11.

<sup>317</sup> Ameritech-IL's Initial Brief, pages 117-118.

<sup>318</sup> Staff's Initial Brief, page 21.

<sup>319</sup> Staff Exhibit No. 2.0 at 10.

<sup>320</sup> Staff Exhibit Nos. 2.1 at 11, 2.2 at 3 - 4.

#### **4. Commission Analysis and Conclusion**

In its Reply Brief, Rhythms asked that the draft agreement between Ameritech-IL and Covad be admitted into evidence. Although the draft was discussed in testimony at the hearing, it was not admitted into the record because it is not a final, executed document and Counsel for Ameritech-IL represented that the final agreement would be immediately forthcoming. Rhythms reserved an exhibit number so that the final agreement could be admitted. However, Ameritech-IL has advised Rhythms that the agreement is still not available. In the interim, Rhythms moved that the Commission accept the draft into the record as the best available evidence to corroborate its evidence on non-recurring charges. The Commission finds that Rhythms' motion should be granted and the draft agreement between Ameritech-IL and Co shall be admitted into the record. The Commission –IL directs Ameritech to file the final, executed agreement with the Commission upon its completion. Should the terms of the final agreement differ materially from the draft contract terms upon which Rhythms relies, the Commission will review its order and revise its findings and conclusions if warranted.

The Commission finds that Ameritech-IL's proposed charges for cross connects are based on an inefficient configuration. Prices for UNEs must be based on the forward-looking costs that would be incurred in developing an efficient network. Efficiency demands that splitters be located on or near the MDF. Permitting Ameritech-IL to charge inflated prices for cross connects would allow Ameritech-IL to benefit from inefficient splitter placement. The FCC has clearly directed that, regardless of configuration, charges for line-sharing cross-connects may be only minimally higher

than they would be for a splitter at the MDF. The Commission adopts the prices proposed by Rhythms.

**D. Line-at-a-Time Company-Owned Splitter Charge**

**1. Rhythms' Position**

Rhythms urges the Commission to reject Ameritech-IL's proposed price for the splitter as inflated, and instead apply the \$0.84 price proposed by Rhythms and supported by the evidence in this record. Ameritech-IL's study confirms that the key investment and cost factors in Rhythms' analysis are reasonable and, in the case of depreciation assumptions, far more conservative than Ameritech-IL's own approach.<sup>321</sup>

Ameritech-IL's labor factor vastly overstates the cost of the effort required for splitter installation and related activities. A simple comparison of the expenses suggested by Ameritech-IL with the direct estimate of splitter installation and maintenance costs demonstrated by Mr. Riolo shows that the Ameritech-IL factor-based expenses are illogical for a simple, passive device such as a splitter.<sup>322</sup> Application of the Ameritech-IL digital circuit equipment factor would lead to overrecovery of costs because splitter installation did not contribute to the historic relationship between digital circuit equipment investment and installation costs for Ameritech-IL's network.<sup>323</sup>

Rhythms' position is consistent with the positions of other CLECs.

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<sup>321</sup> Rhythms Exh. 1.0, Murray Direct, at 107-108. Mr. Smallwood has claimed that certain costs were left out of the Rhythms analysis. Contrary to that assertion, Rhythms has shown that, while some blatantly inefficient costs were deliberately excluded, all necessary costs are considered in its analysis. See Rhythms Exh. 1.4 at 26-28 and Rhythms Exh. 2.11 at 24-25.

<sup>322</sup> Rhythms Exh. 1.0, Murray Direct, at 108-112.

<sup>323</sup> Rhythms Exh. 1.0, Murray Direct at 108:17-111:16.

## **2. Ameritech-IL's Position**

Ameritech-IL argues that its proposed splitter price is reasonable, complies with both the FCC's TELRIC Rules and this Commission's prior decisions in Docket Nos. 00-0312/0313 and Docket Nos. 96-0489/0569, and should be adopted. Ameritech-IL argues that the Commission has accepted Ameritech-IL's factor-based approach, which represents an averaging of installation costs over a large grouping of equipment, in prior cost studies. Ameritech-IL argues that the Commission should not deviate from it in this proceeding. Ameritech-IL asserts that although splitters were not included in the pool of costs for which the factor was developed, the inclusion of splitter equipment and its installation costs in the calculation would not change the resulting factor in any meaningful way. The Commission did not adopt Rhythms' proposal in Docket Nos. 00-0312/0313.

## **3. Staff's Position**

Staff did not address this issue in its Initial Brief.

## **4. Commission Analysis and Conclusion**

The Commission finds that Ameritech-IL's proposed price for the splitter is inflated and not supported by evidence in the record. Therefore, the Commission will apply the \$0.84 price proposed by Rhythms and supported by the record. The key investment and cost factors in Rhythms' analysis are reasonable, whereas Ameritech-IL's proposal overstates the cost of splitter installation and related activities. In addition, application of the Ameritech-IL digital circuit equipment factor is not appropriate in this case because splitter installation is a new technology and has not been accounted for in the development of this factor.



**E. Service Ordering Charges**

**1. Rhythms' Position**

**a. Service Ordering Charge**

Rhythms proposes that Ameritech-IL's proposed service order charge should only apply on an interim basis, subject to refund, because the Commission is addressing forward-looking service order charges for UNEs in Docket No. 98-0396. If the Commission, in Docket No. 98-0396, permits Ameritech-IL to apply its proposed analog loop service order charge without change, the Commission should allow parties to propose adjustments to reflect the lower costs associated with line sharing arrangements.

**b. Line Connection and Service Coordination Charges**

The Commission must reject Ameritech-IL's proposed line connection and service coordination charges. Ameritech-IL's proposed tariff contains these two separate nonrecurring charges for line sharing but fails to provide even a basic description of the charges. Moreover, Ameritech-IL's testimony contained no mention of either the line connection charge or the service coordination charge, nor did Ameritech-IL submit a cost study for either proposed charge. Ameritech-IL's proposed line connection and coordination charges are entirely unsupported, and the Commission must reject them as unreasonable.

**2. Ameritech-IL's Position**

Ameritech-IL's tariff proposes the existing analog loop service order charge for line-sharing arrangements that was developed in compliance with the Commission's

Order in Docket No. 96-0489/0569. That charge is \$13.17.<sup>324</sup> Ameritech-IL does not dispute that the outcome of Docket No. 98-0396 should govern the ultimate charge for HFPL service ordering.

### **3. Staff's Position**

Staff did not address this issue in its Initial Brief.

### **4. Commission Analysis and Conclusion**

The Commission finds that Ameritech-IL's proposed service ordering charge shall apply on an interim basis, subject to refund, pending the outcome of Docket No. 96-0489/0569.

## **FINDINGS AND ORDERINGS PARAGRAPHS**

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) Ameritech Illinois is a telecommunications carrier as that term is defined in Section 13-202 of the Public Utilities Act;
- (2) the Commission has jurisdiction over Ameritech Illinois and the subject matter herein;
- (3) the recitals of fact and conclusions of law set out in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and law;
- (4) Ameritech Illinois' line sharing tariff should be modified consistent with the determinations and findings made in this Order;
- (5) Ameritech Illinois shall file its revised line sharing tariff within 15 days of the entry of this Order;
- (6) any motions objections or petitions in this proceeding that have not specifically been ruled on should be disposed of in a manner consistent with the findings and conclusions herein;

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<sup>324</sup> Ill. C.C. 20, Part 19, Section 2, Original Sheet No. 33.

IT IS THEREFORE ORDERED by the Commission that Ameritech Illinois shall modify its line sharing tariff consistent with the directives set forth above within fifteen days of entry of this Order.

IT IS FURTHER ORDERED that any and all requests or objections not heretofore specifically ruled upon are hereby deemed disposed of in a manner consistent with the ultimate conclusions contained in this Order.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.800, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this \_\_\_\_\_ day of December, 2000.

(SIGNED) RICHARD L. MATHIAS

Chairman

(S E A L)